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Part I

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M.R.D.
12-4-56

Submitted.

The question for the consideration of the R.L.A. is whether the book "Desh Drohi" falls within the mischi mischeif of any of the clauses of sub-rule (6) of rule 34 of the Defence of India Rules or of any of the Clauses of sub-sec. (1) of sec.4 of the Indian Press (E.P.) Act, 1931.

2. It is not proper to detach the various passages from their context and then gather the real object underlying. As held in re Anandbazar Patrika case(I.L.R.60 Cal.400 at P.410), the book should be read as a whole in order to find out whether there are any offending passages in the book which are or are not of the nature described in sub-sec.(1) of sec. 4 of the Indian Press (E.P.) Act or in sub-rule (6) of rule 34 of the Defence of India Rules. The book dwells upon and compares the pros and cons of the "Satyagraha" or non-violence and "revolutionary" movements and the sacrifices which one has to give if he is inclined to join any of the movement It is stated that both the movements have the same goal in view, but that Gujarat should not follow the revolutionary movement (vide PP.50-51). Prabhodchandra, once a staunch "Satyagrahi" initiated himself into the secret cult of revolutionary activities in Bengal. From Bengal he was persuaded by Dayashankar's friends to disassociate himself from such activity and to come down to Bombay (PP.50-53). On his way to Bombay he meets one Sir Baldevsingh (bogus) who persuaded him to join Govt. service as a "Fozdar" (Sub-Inspector of Police). Prabhodchandra was appointed as "Fozdar" on Sir Baldevsingh's

on Sir Baldevsingh's letter of recommendation and was send Upkanth (a fictitious place) to watch the actvities of Dayashankar, and Savitri who were the leaders of non-violence movement and with whom he associated before he went to Bengal (PP.91-108). Dayashankar receives a letter from the Secret Society of Bengal informing him that as Prabhod had betrayed his creed and had acted as a traitor, his secret men will defeat Prabhod in all his activities and working under the guidence of one, Kagdev, will bring him into disgrace(PP.107108) As regards the meeting of these secret men and their conversation attention is invited to PP.121-123 and to the translation thereof. It will be clear that their object was to promote the cause of non-violence in a secret manner and undertake to do this without use of force or weapons. From the last letter of Prabhodchandra written to Savitri, it will be clear that Prabhodchandra him self acted in dual capacity as Fozdar and Kagdev (PP 287-292). It appears that he had forged the letter of Sir Baldevsingh for seeking service in the police Deptt. and this fact was exposed when the real Sir Baldevsingh arrived in Bombay . The plot was then exposed. The object of playing this double game is made clear in the letter where Prabhodchandra states "The people should no doubt be led to the path of sacrifies, <u>but some encouragment should be giver to them to keep up the spirit of sacrifice</u>. People are not saints who would stick up to their faith like ascetics. Every moment they seek to follow foot-steps of others and Kagdev has furnished that example, " The letter read by itself appears to encourage one to resort to the mean adopted by Prabodh. It recommends that non-violence in itself would not suffice but that some measures should be adopted by indirect means to keep up the spirit

Office of the R.L.A.

Though the novel Desh Drohi is entirely harmless it is very doubtful if read as a whole it can be held to come within the mischief of any of the provisions of section4(1) of the Indian Press(Emergency Powers) Act, 1931 or of rule 34(6) of the Defence of India Rules.

Sd/-
2/1

Remembrancer of Legal Affairs.

U.R. to H.D. (Poll.) No. -Confl. Dated the 2nd January 1943.

MR.D.
12/4/66.

Submitted.

In connection with the measures to increase food and fodder crops the P.W.D. had referred the matter to R.L.A. whether the D.,of I Rules could be invoked for prohibiting sugar cane cultivation on irrigated lands in contravention of express agreements to the contrary. The R.L.A. advised, that it would be safer to approach the Govt. of India to frame a new rule or amend the existing rules(R.L.A.'S opinion is at PP.3-4 in the file) The P.W.D. has now put up a draft to the Govt. of India (atPP. 27-28) while they want to know whether it is in order.

Sd/-
4/1

P.A. This relates to the framing of a new rule under th D. of I Rules. Perhaps it should go though S.A.S.

Sd/-
4/1

S.A.S. The draft letter at P.27 ante is in conformity with the R.L.A.'S opinon.

Papers may be seen and returned.

Sd/-
4-1

A.L.R.

The exact form of amendment and its precise location are matters for the draftsmen in the Gof I. Reply may be:- Seen and returned.

Para 2 of the letter may be amended slightly as in pencil,

Sd/-
5/1

R.L.A.

Sd/-
5/1

M.R.D.
12/4/51

Submitted.

Mr. Salivati's news letter dated 25-12-42. In the first para. it is stated "They were much distressed ex over the decent order of blackout or news or a certain event ..... The ban has been imposed only by two Provincial Govts. Cantal Provinces and Bombay.. ..... There is no such ban in Madras and the Madra papers are free to publish authentic and objective account of events happening in the Central Provinces." It has avoided specified reference to Prof. Bhansali's activities and the Govt. Order No.S.D. III/2870, 15-12 42, and consequently to an ordinary reader it might not be quite so clear to which "orders of balckout" and to what "certain event" the article refers to. Bu the other readers having special knowledge of the Govt Order such as printers, publishers and editors of news papers would be left in no doubt that the "orders of blackout"were the order of 15th December 1942 and the "particular event" referred to was with reference to Prof. Bhansali's activities. To that extent the arti is in breach of the Govt. order dated 15-12-42 which pressly bans publication or any matter relating direc ly to Prof. Bhansali's activities or to the order or any reference whatever to that Order. From paras,2,3 and 4 it, however, appears that the article was publi shed with a view to "pursuading the Govt. concerned t withdraw the orders" and not from a desire to(with)giv(publicity to Prof.Bhansali or his activities. Conse quently, as advised by the RK.L.A. in his opinion E

in his opinon No. 576-Confl., dated 31-12-42, it would be reasonable to regard the breach as being too technical to justify any drastic action.

Sd/
5/1

S.A.S. I agree.

It is true that Mr. Salvati's news-letter dated 25-12-1942 not only makes a reference to Govt's orders of blackout of news of certain event but also states that that order of Govt. relates to the ban imposed on publishing an authentic and objective account of events happining in C.P. still it stops short of divulging clearly the nature of that order consequently as opined by the R.L.A. in his opinion No. 575 confl. dated 31-12-1942 it would still be reasonable to regard such breach as being too technical to justify any drastic action

Sd/-
7/1

A.R.L. I agree

Reply may be:-

The main object of the Govt. order in question was apparently to prevent publicity being given to Prof. Bhansali or his activities. From that point of view Salivati's News letter is not open to much objection. The burdan of the news letter appears to be to vindicate the rights of the press and to protest against the nature of Govt.'s order rather than to give publicity to Prof. Bhansali or his activities.

MR.D.
12/1/43

Office of R.L.A.

It is true that Salvati's News-letter of 25th December 1942 avoids specific reference to Prof. Bhansali and the government Order No. S.D. III/-2670 of 15th December 1942. But it refers to "the recent orders of black-out of news of a certain event" and to the ban imposed by the Government of Bombay and Central Provinces regarding the publication of "authentic and objective account of events happening in the Central Provinces". To the ordinary reader it might perhaps not be quite so clear to which Government order these references relate, but other readers in the know of the Government order of 15th December would be left in no doubt that the references relate to that order and none else. Consequently the News-letter is in contravention of the Government order in question. In view however of the fact that the main object of the News-letter appears to be to vindicate the rights of the Press and to protest against the nature of the government order rather than to give publicity to Prof. Bhansali or his activities the breach can be regarded as too technical to warrant drastic action.

Sd/- 8/1

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.) No. 218 dated the 9th January 1943.

M.R.D.
12/4/56

Submitted.

It appears that firing was resorted to in Poona on the 9th, 10th, 11th and 12th August 1942. On 16-8-42 the President, Maharashtra Provincial Hindu Sabha, Poona appointed a Committee of Inquiry consisting of six persons to make inquiries on the points referred to it for inquiry. The President, Maharashtra Provincial Hindu Sabha has sent a copy of the report to A(H) with his remarks. The questions for consideration of the R.L.A. are:

(1) Whether the report in question is a "Prejudicial report" within the meaning of rule 34(7) read with rule 34(6) (ee) of the Defence of India Rules;

(2) If so, whether the members of the Committee of Inquiry are liable and prosecution under clause(c) of rule 38(1) of the Defence of India Rules.

2. QUESTION (1). The report gives an account of the firing that took place on different dates at different places and states how innocent persons who had no connection with the C.D. Movement or taken part in the disturbances had become victims of the firing which was unjustifiable. In the penultimate para of the report, the Committee remarks thus:-

"In all, there was firing for five times between the 9th &12th August and though one or two of these firings may be said to have been resorted to for the purpose of dispersing the crowd, still even in those cases innocent persons were wounded and some of them met their death. Therefore, it is but necessary and ju

and just that compensation ought to be given to those who were wounded and to the relatives of these who have lost their lives on x account of this firing. This Committee, therefore , makes the following recommendations etc.,

In this letter to A(H), the President, M.P. Hindu Sabha, Poona, states"All this has been done with a view to assist the Govt. in rendering justice in proper quarters. I hope and trust that the Govt. would graciously consider the cases submitted to them and award compensation to the parties concerned as recommended by Enquiry Committee and by myself." These observations indicate the main object underlying the appointment of the Inquiry Committee, It is no doubt true that the Committee was asked to give its opinion regarding the lathi charges and the firing. As the Committee could not gather details regarding the lathi charges, it refrained from making and observations on the conduct of the Police and restricted its scope of inquiry to the incidents of firing. It appears that on the 12th August 1942 firing was opended from the Military Tanks. With reference to this incident the Committee remarks as follows:-

"It seems the authorities conceived the plan of using the Military men in place of ordinary civil Police and the Military used Bren-Guns and Tanks in place of Lathis and Rifles. But the people were not at all aware that the authorities had decided to use these extrordinary means. Had the people been aware of this decision of the authorities, things would have perhaps taken a different turn, etc."

M.R.I
13/4/5(

Office of the R.L.A.

The only statement that might bring the reports within the penal provisions of the Defence of India Rules seems to be the allegation that the firing by the military was without cause or provocation. The relevant provision would then be caluse (ee) of rule 34(6). But although the allegation is objectionable, yet the Committee may have intended to allege no more than an error of judgment on the part of the military or to offer a mx criticism of their orderss. The allegation that the firing was without cause or provocation is indeed serious but in stating the allegation there has been no attempt to exacerbate the reader needessly. There is indeed a conspicuous lack of vituperation, however rash the allegations. Further the allegations of needless firing occupy only a very small space in the report. This in itself does not absolve the Committee. Yet the peport must be read as a whole and in the context I do not think the allegations would come within clause(ee).

Sd/-
22-1

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.), No. 552 ,Dated 22-1-1943.

M.R.D.
13/4/56

Office of the R.L.A.

It appears that licenses have been issued under clause 3 of the Bombay Retail Trade control and Licensing Order, 1942, which was issued in exercise of the powers under rule 81(2) of the Defence of India Rules. That clause prohibits a person from engaging in any undertaking which involves the sale or storage for sale in retail quantities of certain controlled articles except under and in accordance with a license issued in that behalf by an officer authorised by the Provincial Government. The question now is whether the licensed retailers under this clause are affected by the two Government Orders in S F.D. (Supply)Nos. 383-II and 383-II(a) dated 30-12-1942. These letter orders prohibit any person holding certain grains (being controlled grains) exceeding ten Bengal Maunds in quantity at any goddem or other place of storage in the City of Bombay etc. from disposing of the sticks without the written permission of the Government of Bombay. The letter orders are also issued under rule 81(2) of the Defence of India Rules, but after the grant of the licenses referred to. The licenses under the licensing Order are mainly for the purpose of licensing the professing, namely, engaging in any undertaking which involves the sale or storage for sale in retail quantities and incidentally for regulating the transactions undertaken. The orders of December 1942 are, on the other hand, for the main purpose of freezing stocks by prohibiting their disposal except with Government permission. Both the order

Both the orders are validly issued under rule 81(2) and subsist side by side since their purposes do not exactly coincide. While it is arguable that the orders of December 1942 may not amount to the directions of Government for the purpose of paragraph 5 of the licrase issued under the Licensing Order and so not be applicable to the licensed retailers ~~licensed retailers~~ by virtue only of the said paragraph it is at the same time clear that the license issued under the Licensing Order by the Officer authorised by Government in that behalf cannot be deemed to be the written permission of Government itself for the purpose of the orders of December 1942. The result is that the Licensing Order as well as the orders of December 1942 hit retail dealer and special permission of Government would seem to be necessary under the orders of December 1942 before the retailer can transact business in the undertaking in respect of which he holds a license under the licensing order. The question raised by F.D.(Supply) at 'A' on page 16 is therefore answered in the negative.

Sd/-20/1

Remembrancer of Legal Affairs.

U.R. to F.D, (Supply), No.500 , dated the 21st January 1943.

M.R.D.
13/4/56

Extract of the R.I.A.

Rules 81(2)(a) of the Defence of India Rules enables the Provinces(and the District Magistrate) to regulate or prohibit "movement" and "transport" of goods. Since the word"movement " is used in addition to "transport", it would cover the field of "import" and "export" into and out of British India(vis-a-vis the Indian States and Foreign States.). Under rule 81(2)(a), therefore, it was within the competence of both the province and the District Magistrate to issue orders, for the present prohibiting exports from specified parts to any place in India (i.e. including prohibition of exports to Indian States, but not to Foreign States). Rule 84 is a special provision covering the subject of "import" and "export" (see the definitions in the rule) vis-vis the Indian States and Foreign States. The power to regulate or prohibit under this rule rests with the Central Government. An order of the Central Government under rule 84 prohibiting import and export will to the extent of the field of prohibition(together with the exemptions which rule 84 enable to be specified) derogate from the general field available to the Province or the District Magistrate under the head"movement" in rule 81(2)(a). This is owing to the principles "generalia specialibous non derogant" and "Generalibus specialia derogant." The field at present occupied under rule 84 is as set out in the Cental Government's Notification in the Commerce(War) Department No. 91C#(1)/42 dated 7-2-1942 which prohibit exports (inter alia of "grain pulse, flour"see item 9 of Part D of the

item 9 of Part D of the Schedule to the notified order)

to any place outside India, and exempts from its operation inter alia goods "consigned to or destined for the portuguese possessions in India, and [illegible] intended for use or consumption therein" The fields of Export" outside India" being now covered under rule 84, the orders under rule 81 (2)(a) must now remain limited to exports to places within "India", and the omission of "in India" from the District Magistrate's order will not operate to remove the limitation. In the circumstances it would be necessary to prohibit the export of wheat etc. to the portuguese possesions in India by amending the relevant exemption clause in the Central Government's order for which the Central Government will have to be approached.

Sd/-
20/1

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No. 505 ,dated 21st January 1943.

M.R.D.
13/4/46

Office of the R.L.A.

The R.L.A. is requested to give his opinion regarding the article "Britons' violence in Egypt" appearing in the issue of "Karnatak Bandhu" dated 23rd December 1942. The article in the main appears to be a recital of a number of atrocities which British soldiers were alleged to have committed in Egypt in 1919 after the arrest and banishment of Zaglul Pasha, the Egyptian leader. It is by no means clear why it was thought necessary to publish such rumours. The article is pernicious and it is hard to imagine any other motive than malice for its publication. But it is not so very obvious that it comes within the purview of rule 34(6) of the Defence of India Rules. The article is certainly likely to bring into hatred or contempt that portion of His Majest Majesty's forces that was stationed in India in 1919. Rule 34(6)(eee) of the Decence of India Rules defines a "prejudicial Act" as one intended or likely to bring in hatred or contempt or excite disaffection towards His Majesty's forces or any section thereof. It seems that clause envisages only cases of exciting hatred, contempt or disaffection towards the present forces and not His Majesty's forcesxx in past. The Defence of India Act and Rules thereunder are made generally to forward the efficient prosecution of the present war. If it were held that a report of atrocities alleged to be committed in 1919x by British soldiers could be dealt with under clau (ee) of rule 34(6), it would be difficult to know where where to draw the line. For example, allegations against British soldiers in the Indian Mutiny might be liable to

might be liable to be dealt with under that clause. Therefore, it seems reasonable to hold that neither clause(e) nor clause(ee) or rule 34(6) applies in the present case, unless the hatred or contempt that is aroused against the foces or Government of 1919 attaches itself to the present forces or Government. On the whole, the hatred or contempt that is likely to be aroused cannot be said to attach itself to the present forces or Government. On the other hand the recital of such rumours at the present time appears likely to influence the conduct or attitude of the public in a manner likely to be prejudicial to the efficent prosecution of the war and therefore the articles should come under clause (K) of rule 34(6) of the Defence of India Rules.

Sd/-

for Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.), No. 228, dated 9th January 1943.

M.R.D.
13/4/56

Office of the R.L.A:

By Government of India, Department of Commerce Notification No. Econ. A.D. (P.C.) 16/41, dated the16th January 1942, issued in exercise of the powers conferred by ~~clause~~ clause (b) of sub-rule(2) of rule 81 of the Defence of India Rules, the Central Government was plased to direct that paper specified in column 1 of the First Schedule should not be sold by any paper mill in wholesale quantities to any dealer or other person at prices (f.o.r.) higher than those specified in column 2 of the said Sechedule for deliveries at any of places mentione in the Second Schedule. The types of paper controlled by this notification were(1) bleached woodfree M writi and MF printing paper including pulp boards but excludi blotting paper, (2) brown wrapping and carbridge paper, and(3) badami paper. Among the places specified in the Second Schedule were, so far as this Province is concer Bombay and Poona.

2. By General Department Notification No. 37/2, date the 25th May 1942 issued in exercise of the powers conferred by sub-ruld (2) of rule 81 of the Defance of Ind Rules, the Government of Bombay ordered that Indian mad paper, for which the Government of India nad fixed maxi mum wholesale prices under it notification in the Depa ment of Commerce No. Econ.A.D,(P.C.)16/41, dated the 16 January 1942 should not be sold retail at any place in the City of Bombay at prices higher than these mention in the annexed Schedule. It transpires that paper manu factured by the Sirpur paper Mill situate in Hyderabad

Hyderabad State is being sold by dealers in the City of Bombay at prices considerably higher than those fixed by the Government or Bombay under its notification of 25th May 1942. Accordingly the questions raised for the consideration of the Remembrancer of Legal Affairs are:-

(1) Whether the Government of India Notification dated the 16th January 1942 applies to all paper mills in mills in India or only to those situate in British India; and

(2) Whether the Government of Bombay Notification, dated the 25th May 1942 applies to paper produced by the Sirpur paper Mill situate outside British India and sold by paper merchants in Bombay.

(3) The Government of India notification of 16th Manuary 1942 manifestly applies to all paper mills in India irrespective of their location. It imposes a ban on the sale of specified types of paper by all paper mills whether they be situate in British India or Indian States at prices in excess of the fixed maxima for delivery at any of the places mentioned in the Second Schedule. The applicability of the notification depends not so much on the location of the mill as on the place of sale. If the sale takes place in British India for delivery at any of the places specified in the Second Schedule then the notification would apply irrespecrive of the place of manufacture of paper. If on the other hand the sale takes place outside British India for delivery at any of the places speficied in Second Schedule then the notification would it appears have no application. Generally speaking by the terms of contract

Generally speaking under the Sale of Goods Act, 1930, the place of sale is determined by the terms of contract and the manner of delivery. In a case like the present it is within the power of the parties so to arrange the contract and the manner of delivery as to place the sale outside the limits of British India and render the Government of India paper control notification ineffective.

4. Adverting to the second question, the Government of Bombay notification would apply if a dealer having bought the specified type of paper at wholesale price inside British India attempts to sell it in the City of Bombay at a retail price higher than the fixed maximum. But where a dealer purchases paper wholesale at a place outside British India and then sells it in the City of Bombay at retail prices in excess of those specified in the schedule the postion is not quite so clear. The notification refers to "Indian-made paper, for which the Government of India has fixed maximum wholesale prices". These words are theoretically capable of two interpretations. They may firstly be interpreted as meaning India-Made paper of the type for which the Government of India has fixed wholesale prices. Secondly they may be interpreted as meaning particular lots of Indian-made paper whose wholesale prices have been actually controlled by the Government of India notification. If the first interpretation be correct, then the retail price in Bombay of all paper falling within the First Schedule to the Government of India notification would be controlled, no matter where the paper was produced or where the wholesale transaction

where the wholesale transaction took place. If the second view be correct, the paper in the present case would be exempt from the provisions of the Bombay notification. It would also follow from that view that home-made paper as distinct from factory-made paper would be exempt. Another consequence would seem to be that paper sold wholesale anywhere in Bombay Province, other than at delivery places mentioned in the Second Schedule to the Government of India notification, would also be exempt as regards its retail price. The first interpretation which gives a more liberal meaning to the words seems from the language point of view the more natural interpretation. It also seems obvious that Government must have intended to take toitself greater powers in the control of retail prices than this restricted second interpretation would give. Further, it would be anmalous that paper from the same mill would sometimes be subject to the notification and sometimes be exempt according to the place of wholesale transaction. For those reasons there seems to be ample justification for holding that the Government of Bombay notification covers the present case and that the Sirpur paper is not exempt, no matter where the wholesale transaction took place. But the question is not free from doubt, and when the language is not so clear as it might be a court might be inclined to accept the interpretation which favoured the accused. It would be advisable to amend the Government of Bombay notification and to speficy, independently of the Government of India notification, the types of paper for which retail prices are fixed.

Sd/-

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No. 230 dated the 11th January 1943.

M.RD
13/4/6

Office of the R.L.A.

The following two questions are for consideration of the R.L.A.:-

1) Whether the consequences mentioned in the Food Controller's note at A on page 1 ante flow from the wording of the F.D. (Supply) Notification No. 13 (a). dated 8-1-43: and if so

(2) Whether the license granted under the Bomb Bombay Retail Trade Control and Licensing Order, 1942, is as assumed by the Food controller, an authority in itself to dispose of in retail frozen rice not exceedin 20 mds.

2. Question No. (1).- The view expressed by the Foo Controller at A on page 1 ange, appears to be correct. The orders passed by Government in F.D. (Supply) Notification No.13(a) dated 8-1-43 apply to any persons holding on their onw account or on the account of of in partnership with any others person any stocks of rice or paddy exceeding 1o maunds in quantity at any godown or other place of storage in the City of Bombay or Bombay Suburban District. It is however doubtful if the order would apply if stocks are held at a place which is not a godown or other similar place of storage irrespective of who holds the stocks.

3. Question No.(2).- The Bombay Retail Trade Control and Licensing Order, 1942, was issued by this Government for licensing purposes under rule 81(2)of th Defence of India Rules on 29-7-1942. The notification in question was issued by this Government for freezing purposes under the same rule on 8-1-1943. The license granted under the Bombay Retail Trade Control and

Trade Control and Licensing Order is not themrefore an authority in itself to dispose of in retail rice not exceeding 20 mds. after such rice is forzen. The orders contained in the notification dated-8-1-1943 will apply to a licensed retailer notwithstanding his license under the Bombay Retail Trade Control & Licensing Order, 1942 and the written permission of Government under the said notification will be necessary if such retailer wishes to remove or dispose of his stock of rice exceeding 10 md. (See R.L.A.'s opinion in the linked case).

Sd/-
20/1

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) No.504, dated the 21st January 1953.

M.R.D.
134/56

R.I. No. 638
22/1/43.

Submitted.

2. Please see letter from the Supdt., Govt. Printing and Stationary, Bombay and F.D. (Supply/Mats &) PP. 1-2 ante. By clause(1) of the G.D. notfn.No.37/2. dated 26-5-42 issued in exercise of the powers conferred by sub-rule(2) of 81 of the Defence of India Rules, the Provl. Govt. has directed that Indian-made paper, for which the Govt. of India has fixed maximum wholesale prices under its notfn. in the Deptt. of Commerce, No. E-Con.Ad. (P.C.) 16/41, dated 16th January 1942, shall not be sold retail at any place in the City of Bombay at prices higher than those mentioned in the Schedule appended to the notification. It appears that the Supdt. G.P.&S., Bombay had called for quotations for certain grade of controlled paper from certain merchants in Bombay and the same are found to be more than the limits prescribed in the notfn. The supdt. is of the view that it is doubtful if any offence can be considered to have been committed by merchants who quoted higher rates than those prescribed in the Schedule appended to the notfn. The R.L.A. is requested to advise in the matter.

3. Attention of F.D (Supply) may be invited to R.L.A.'s opinion No.104-P-Confl., dated 9th Septr. 1940 and No.3987, dated 13-8-1942(copies enclosed). The view taken by the Supdt., Govt. Printing and Stationary Bombay in his letter at P.1 ante is not correct, and no amendment of the order for the purpose would be necessary

M.R.D.

would be necessary. An apealagainst acquittal in a similar case is pending in the High Court. The reult of that appeal may however be awaited.

Reply may be as in para 3 of Mr.Nadkarni's note

Sd/-
23/1

A.L.R. On the opinions quoted, Govt. filed a case against a merchant for quoting higher prices for gulvanished buckets to the B.E.S.T. The Presidency Magistrate acquitted and Govt. filed an appeal so far I know, that appeal is not yet decided. Would office please put up papers.

Sd/-
25/1/.

Resubmitted. With the papers A.L.R. by in view (slip)C). the appeal filed by Govt. has not yet decided by the High Court and the decision is awaited.

Sd/-25/1

S.A.S. Reply may be para 3 of Mr. Nadkarni's

A.L.R Note as further amended,

Sd/-
25/1

A.L.R. Reply may be:-

Attention is invited to R.L.A.'s opinion (the two above mentioned) The point raised by the Superintendent Govt. Stationary and Printing is dealt with therein Relying on these opinions Govt. prosecuted a merchant for quoting prices above the controlled prices for galvanished iron buckets. The presidency Magistrate 3rd Court acquitted the accused and Govt. lodged an appeal to the High Court against the acquittal. The High Court has not yet decided the appeal. Pending its deciding it is invisable

M.R.D.
13/4/56

Pending its deciding it is inadvisable to take any action. If the High Court upholds the view that such quotation does not amount to an attempt to commit an offence. F.D. may consider the Supdt's suggestion to make such quotation itself an offence.

Sd/-
25/1

Sd/-
26/1

M.R.D.
13/4/56

Office of the R.L.A.

Attention is invited to R.L.A.'s opinions No.104-P. Confidential dated 9th September 1940 and No.3987,dated the 13th May 1942(copies enclosed.) The point raised by the Superintendent, Government Printing and Stationary, is dealt with therein. Relying on those opinions Government prosecuted a merchant for quoting prices above the controlled prices for galvanised iron buckets. The Presidency Magistrate 3rd Court acquitted the accused and Government lodged an appeal to the High Court against the acquittal. The High Court has not yet decided the appeal. Pending its decision it is inadvisable to take any action. If the High Court upholds the view that such quotation does not amount to an attempt to commit an o fence, F.D. may consider the Superintendent's suggestion to make such quotation itself an offience.

Sd/-
27/1

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply),No.691,Dated the 28th January 1943.

M.R.D.
13/4/56

422
15-1-43

Submitted.

2. Order under clause(c) of rule 26(1) of the Defence of India Rules issued by the Commissioner, Benares Division U.P. and forwarded by the Home Secy., U.P., was sent to the the Supdt., Thana District Prison for serving the same on K.K.P. Trivedi, who is detained there in custody. The Supdt. has returned the Order duly signed by the security prisioner in his presence. H.D.(Spl.) is doubtful whether the procedure adopted by the Supdt. was in consonance with rule 119 of the Defence of India Rule (P.13ante). It is also stated that in the case of orders of detention issued under clause(b) of rule 26(1) the practice adopted by H.D. is to show the order to the individual affected. The R.L.A. is requested to advise whether this procedure of serving the orders both under clauses(b)and(c) of rule 26 (1) of the Defence of India Rules satisfies the requirements of rule 119 or whether it is necessary to serve them on individuals concerned by delivery.

3. Clause(1) of rule 119 of the Defence of India Rules provides inter alia that save as otherwise expressly provided in these Rules, every authority, officer or person who makes any order in writing in purpsuance of any of these Rules, shall in the case of an order affecting an individual person serve or cause the order to be served on that person--

(1) Personally, by delivering or tendering to

(1) Personally, by delivering or tendering to him the order, or

(ii) by post or

(iii) Where the person cannot be found, by leaving an authentic copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain;

and there upon the person or persen concerned shall be deemed to have been duly informed of the order. It will thus appear from the provisons of the rule that merely taking signature on the order in acknowledgment of having seen the order issued under clause(c) of rule 26(1) or showing the same to the person ordered to be detained under clause(b) of rule 26(1) will not be sufficent to satisfy the requirements of this rule. If the person concerned can be found the order must be delivered or tendered to him personally or by post and where the person cannot be found it must be served according to the procedure prescribed in rule 119(1). It apears therefore that it is necessary to serve these order on the persons concerned by delivery of those orders.

Sd/-
16/7

M.R.D.
13/4/56

There is no provision in the Defence of India Rules prescribing any special manner of serving notice of orders issued either under clause(b) or clause (c) of rule 26(1). Consequently the service of such notice will have to be done in the ordinary way as prescribed under sub-rule(1) of rule 119. That sub-rule provides for the service on the person-

(i) personally, by delivering or tendering to him the order, or

(ii) by post, or

(iii) where the person cannot be found, by leaving an authentic copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain.

It appears that in the present case the order issued by the Commissioner, Benares Division, U.P. under caluse(c) of rule 26(1) was merely shown or read by the Jail Superintendent to K.K. Trivedi instead of being served on him personally by delivering or tendering to him the order. Consequently the procedure followed by the Jail Superintendent is not correct. For the same reasons the practice hither to followed by H.D. in the case of service of detention orders issued under clause(b) of rule 26(1) is also incorrect. It is necessary that the orders issued under clauses(b)and(c)

clauses (b) and (c) of rule 26(1) should be served in the manner prescribed by rule 112(1).

Sd/-
25/1

Remembrancer of Legal Affairs.

U.R.to H.D. (Spl) ,No. 603, dated 25th January 1943.

M.R.D.
-13/4/56

R.I. NO. 604 dated 21-1-43.

Submitted.

2. Messrs. H.B. Thakur of Bombay shipped for Malwan, twenty packages which were described in the Bombay Export General Mainfest No. 3273 dated 18-12-42 as "Jaggery" On arrival at Malwan the Sarkarkun boarded the vessel and examined the contents of these packages which looked like sugar. He sent a sample of it to the Collr. of Salt Revenue, Bombay, who showed it to the Sugar Controller for India. He consulted the leading Sugar merchants and the Sugar Technoligist who held that it was not jaggery but vacum pan sugar(not produced in the sugar factories of this Province) mixed with Lissa sugar. As sugar was misdescribed as jaggery, the Collr. of Salt Revenue of Bombay is taking penal action under the Sea Customs Act against the Master of the vessel. As the Shippers are primarily responsible for misdescribing the packages when they were shipped from Bombay, the Collr of Salt revenue, Bombay has requested the Collr. of Custom, Bombay to take similar action against the shippers. As sugar was exported out of the limits of the Bombay City & B.S.D. by the shippers in contravention of G.N.,G.D. No.30(3) dated 19-6-42 the Collr. of Salt Revenue states that the shippers have rendered themselves liable for action under the Defen of India Rules and has requested the Secretary, F.D. (Supply) to state whether Govt. proposes to take acti against the shippers and as to how the 20 packages which have been detained at the Malwan Custom House

Custom House should be dealt with.

3. The R.L.A. is requested by the F.D. (Supply) to adivise Whether:-

(1) the packages detained at Malwan can be confiscated under the Sea Customs Act; and

(2) Whether the shippers can be successfully prosecuted under the Defence of India Rules for contravention of the order prohibiting export of sugar from Bombay City without a license from the Director of Civil Supplies.

4. Question No.- Under sec. 29 of the Sea Customs Act, the owner of the goods which are to be exported from any customs port, has to state the real value, quantily and description of his goods to the best of his knowldge and belief, in the shipping bill and has to subscribe a declaration of the truth of such statement at the foot of such bill. Under sec. 137, no goods except passenger's luggage, shall be shipped for exportation until the owner has delivered to the Customs Collector or other proper officer a shipping Bill in duplicate containing particulars in addition to those spcified in sec.29 as may be prescribed by the Chief Customs Officer and has paid the duties payable on such goods etc. Under sec. 167(37) misdescribing the contents of packages in a shipping bill(the wording used is bill of entry or application fo passing them") is an offence punishable as follow:-

(1) Such packages together with the whole of the goods contained therein shall be liable to confisction; and

(2) Every person concerned in such offence shall be liable to a penalty not exceeding Rs. 1,000/- The goods are, therefore, liable, to be confiscated if the effence is proved against the owners of the goods. Under sec.158

M.RD

Under sec. 158 of Sea Custom Act, 1878, the Master of the vessel is required to fill in, sign and deliver to the Customs Officers a manifest containing a true specification of all goods to be carried in his ves

M.R.D.
13/4/56

Office of the R.L.A.

Under many of the penal provisions of the Sea Customs Act, confiscation is, or may be, part of the penalty. It appears that the Collector of Customs proposes to take action under Section 167(37). Under that section it is provided that the goods shall be liable to confiscation. A prosecution under the Defence of India Rules is not advisable. Intention or guilty knowledge, it seems, is a necessary ingredient to constitute a contravention of the Sugar Export Order and the burden of proving guilty knowledge would be upon the prosecution. In the circumstances of this case it would be very difficult to prove that ingredient.

Sd/-
1/2

Remembrancer of Legal Affairs.

U.R. to F.D, (Supply) No., 794 dated the 22nd Feb.1941.

M.R.D
13/2/1941

submitted.

Mr. Mandlik has published in a booklet form all the letters addressed by him to Adviser to H.E. the Governor of Bombay and to the D.M. and Collector, est Khandesh, which contain grave and serious alleg gations against the military and Police for fireing which took place at Poona and Nandurbar. The firing by the Military is described as"Wanton firing by the soldiers in charge of tanks". At another place it stated" the alleged wanton firing by Military at Poo Poona on 12-8-42 is rankling deep into the hearts of the Poona people etc,, The passage "They seem to be under the impression that it is the police and military that will save them in the present crisis and not the the good will of the people in the Province. That is why they appear to have given everywhere a carte blanche to the police and the Military and are reluctant to deal with their patent errors and excess excesses. notwithstanding the serious complaints aga st them in that behalf by the suffering public" is higly objectionable and it not only seeks to critici the excesses of the Police and Military but seeks to bring into hatred and contempt and excite disaffecti towards and Govt. Attention is invited to passages a PP. 11,17,18,19and 21. The pamplet read as a whole would appear to fall within the mischief of clusses (e) (ee) and (k) of rule 34(2) of the Defence of India Rules and it appears that Mr. Mandlik can be prosecut under rule 38 of the D. of I Rules It / can also fall within the scope of section 4 (1)(d)of press (Emergen Powers)Act, 1931

Sd/-
30/1

The publication entitled "My correspondence with Government on the Poona and Nandurbar Firing" contains serveral letters wittten by Mr. R.N. Mandlik, a member of the Bombay Legislative Assembly to the Adiviser I to H.E. the Governor of Bombay urging a judicial inqiry into the military and police firing at Poona and Nanduribar. In the course of these letters Mr. Mandlik has tried to show that the firing by the military at Poona on 12-8-42 was wanton and that the police by opening fire on a procession of school boys and girls at Nandurbar on-9-9-42 have exceeded all bounds of decency, humanity, discipline, law and justice. It is true that in all these letter Mr. Mandlik has endeaveured to imperess on Govt. the necessity of ordering a judicial inquiry in pursuance of the alleged promise made by certain members of the Govt. of India to institute inquiries ionto genuene complaints about the police or military exceesses. It is true that the language by Mr. Mandlik is moderate and no attempt has been made to exacerbate the public feelings. But the intention of publication of these letters appears to be to show tothe public that in spite of repeated ~~requirsts~~ requests of a responsible person like Mr. Mandlik to order a judicial inquiry into the alleged wanton firing by the military and the policexat Poona and Namdurbar Govt. does not care not only to hold any inquiry but alse to reply to any of Mr. Mandlik's letter. The indirect effect of the publication would be to bring into hatred or contempt or to excite disaffection towards the Govt.. It appears that the publication is likely to come within the ~~pruviewed~~ purview of clause(e) of rule 34(6)of the Defence of India Rules.

Sd/-
2/2

M.R.D.
13/4/56

Office of the R.L.A.

pamphlet

The paymplet containing letters is objectionable and comes within the purview of section 4(1)(d) of the Indian Press(Emergency Powers) Act, 1931, and rule 34(6)(e) of the Defence of India a Rules.

Sd/-
A/D/

Remembrancer of Legal Affairs.

U.R. to H.D.(Special)No,868 dated the 4th February 1943.

M.R.D.
14/4/56

Office of the R.I.A.

The puppet Government of Nanking is represente as the Government of "FreeChina." Japan's war in China is represented as a struggle to destory the extra territorial rights of America and Britian in China and to rid China of these countries. Doub is cast on the good faith of chiang-Kai-Shek. It i suggested that the Chunking Government is not the real Government of Free China but is merely the tool of America and Britain. It is suggested that America and Britain have only to withdraw from China to bring peace to that land. It is also suggested that the prokises of America and Britain cannotbe rated higher then those of Japan. Japan is re- presented as the champion of Asia against Europe and America. It is suggested that Russia has re ceived so little help from America and British that she is likely to join a war of Asia against America and Europe. The promises of Britain and America to Russia are dobbed as hollow. The article is most objectionable. Misreppresentation and base suggestion could hardly go farther. The article is a slur upon Chiang-Kai-Shek, the Chunking Government and the war aims of America and would therefore fall under clause(a) of Rule 34(6) of the Defence of India Rules. Similarly by its aspersions on Britain and its misrepresentation of her policy it would alsofall under clause(c) of that rule. Finally the article clearly is likely or or intended to influenc the public attitude towards the war most undesirabl particularly by its pro-Japanese tone and would

tone and would therefore come under caluse(K) also.

Sd/-
4/2

Remembrancer of Legal Affairs.

U.R. to H.D. (Special) No. 929 dated 6th February 1943.

M.R.D.
14/4/56

R.I. NO. 223, dated 9-1-43

Submitted with reference to H.D. notes at P. 273 ante.

2. In its letter at P. 271 ante. The Govt. of India has accepted as correct the propostion that a offence of which the trial by an ordinary court was pending on 26-10-42(i.e. the date on which the Special Criminal Courts Ordinance. 1942. came into force in this Province) i.e. an offence of which ordinary court has taken cognizance before that date is not triable by a special Judge or Special Magistrate and an order directing the trial of such an offence by a Spl.Judge or Spl. Magistrate is incompetent. The Addl. Secy.H.D., states that this propostion seems to be at variance with the adivce given by the R.L.A. in his opinion No.43 dated the 4-1-43. He states that some of the cases which Govt. has referred to Spl.Judges seem to come within the mischief of this propostion. The R.L.A. is requested to consider this point.

3. In his opinion No. 43, dated the 4-1-43, RL.L.A. has held that the Provl. Govt. has power to refer under sec.5of the Spl.Cr. Courts Ordinance any case at any of its stages to a Spl.Judge. This opinion seems to have been given on the general question and no distinction was made between cases of which cognizance was taken before 26-10-42 or after 26-10-42 by an ordinary court. But the propostion in respect of the cases pending at the date of the promulgating of the Ordinance was

Ordiannce was discussed in R.L.A.'s memo to the PP. ,West Khandesh No.87,dated the 5-1-43 and he was infromed that theugh the Allahabad and the Nagpur High Courts have held that the Ordinance has no trospective effect i.e. will not apply to cases of which congnizance under the Criminal Procedure Code has already been taken by a Magistrate, it can reasonably be urged, on reading sections 5,10and 25 A of the Ordinance that Govt. can direct the trial of such cases by a Spl.Judge or Spl.Magistrate. A similar point is raised in Cr. applications Nos. 431,433,435,436,and 439 and 1942 and 33 of 1943 in the High Court, Bombay and the applications are likely to come up for bearing in the course of the 3rd week in January. The Govt. of India has taken a contrary view but this Govt. may await a specific ruling from the Bombay High Court on this point.

4. Para 3 of the Govt. of India letter at P.271 ante. The Govt. of India states that the propostion (discussed in the above note) is not expressed so as to hit the transfer from an Ordinary Court to a opened court of a case of which the ordinary court has not taken cognization until after the commencement of the Ordinance. The Govt. of India thinks that such a transfer might be challenged on the ground that secs.5 and 10 of the Ordinance do not specifically provide for transfer cases as contained in section 9of the Defence of India Act. The Govt. of India dom not believe that the absence of power to efder transfer has caused or is likely to cause difficulties but that Govt. has called for the remarks of the Provl.Govt.on this point. The H. D. has requested to R.L.A. to consider this point also.

4. Section 9of the D.of I.Act,1939,providesas follow:-

It is true that in his opinion No. 43 dated 4th January 1943, the R.L.A. expressed the view that the Provincial Government had power to refer under section 8 of the Special Criminal Courts Ordinance any case at any stage to a Special Judge. But in that opinion the question whether a case could be transferred to a Special Criminal Court even after it was brought on the file of an ordinary court was not specifically considered. It appears from the decisions of the Allahabad, Patna and Nagpur High Court that what is crucial is the date of the special Criminal Courts Ordinance. The date on which this Ordinance was brought into operation in the Provinces of Bombay is 26 October 1942 which date will for convenience hereafter be referred to as the relevant date.

2. The following propositions emerge from the decisions of the aforesaid three High Courts:-

(1) An offence embraced by a general or special order in writing under secion 8 of section 10 is triable by a special Judge or special Magistrate as the case may be irrespective of the date on wich the offence was committed, provided that a trial of the offence by an ordinary Court is not pending on the date on which the Ordinance was brought into force in the relevant province by a declaration under section 1(3).

(2) An offence of which the trial by an ordinary court was pending on the relevant date i.e. an

date i.e. an effence of wich an ordinary Court taken cognizqnce before that date is not triable by a Special Judge or Spcial Magistrate and an order directing the trial of such an effence by a Special Judge or Special Magistrate is incompetent.

(3) Section 26 does not preclude a High Court from entertaining an application uder section 491 of the Code of Criminal Procedure by a person tried by a Special Judge or special Magistrate in purpuance of an order which was incometent for the reason indicated in (2)or by a special Judge or SpecialMagistrate whose appointment as such or investment with powers as such was invalid by reason e.g. of his not having exercised the powers specified in section 5 or section 10 for the period required under the applicable section.

3. The Government of India beleive these propostions to be correct. The ppertinent question as to whether or not the special Criminal Courts Ordinance has retrospective effect and if so towhat extent has been disussed by the Patna High Court in Banwarigop and other Vs.Emperor(A.I.R.1943,Pat,18) where it is held as follows:-

"The ordinace cannot be given retrospective operation and is not applicable to these cases in which the criminal proceedings had started before it came into force. Either the summoning of the accused person or any other step which is equivalent to it must be held to mark the initiation of the criminal proceedings against him and if these steps follow authmatically after a Magistrate has taken cognizance of a particular offence it may be safely laid down that there is a criminal case against the accused person as soon as a Magistrate has taken cognizance." The main ground on which the Patna High Court bases its decision

Patna High Court bases it decision is that if a party to a civil action is deemed to have a right to appeal vested in him at the date of the institution of the suit a similar right must be conceded t an accused person at the date when the Criminal proceedings are instituted against him and consequently the right of the accused, who has been placed for trial beofre an ordinary Court on a date prior to the date of the Ordinance, to appeal or to apply in revision to the High Court against convivition cannot be taken away by transfer of his cabe to a special court under the Ordinance. In other words the right to appeal or to apply in revision is a vested right accuring to the accused as soon as he is put up for trial before a Criminal Court. This propositiah has, however, not been upheld by the High Court of Bombay in its decision in Criminal Application No.431of1942(with Criminal Applications Nos.433,435and 436of 1942and No.2 of 1943). The Bombay High Court has carefully considered all the points raised and has held that since the object of the Ordinance was to protect the public it must be given retruspective effect that it was presumably intended to apply retrospectively and conseqnently any case or offence which was awaiting trial could be transfered to a Special Court under the Ordinance; but if the trial had commenced, difficulty might arise. In the course of his judgment Beaumont C.J.observed:-

"It is not necessary to expressany opinion as

"It is not necessary toexpress any opinion as to whther a case can be put up before a Special Judge, the trial of which has already commenced in one of the ordinary Courts. But if the trial has not commenced, it seems to me that under section 5of the the Ordinance the case can be placed before a Special Judge and I see no reason why this court should not give effect to the plain and natural meaning of the words used. The view of t he Patna High Court, with which the other High Courts seem to agree, that a case cannot be transferred after the Magistrate has taken cognizance, is based on the ground that Ordinance must be construed so as not to interfere with vested rights and if that view is wrong as I think it is, the basis of the decision falls to the Ground."

4. The Bombay decision holds that the materal date is not when cognizance is taken but when the trial begins. This is a considerable enlargement of the powers of transfer contemplated in the Government of India's letter. At what stage of the proceedings a trial can be deemed to have begun in the case of a sessions case is perhps not quite clear from the Bombay decision but both the Cheif Justice and Mr.Justice Divatia agree that it cannot be before the date of commitment. In a warrant case there is authority for the view that a trial commences when the accused is called upon to plead to a charge and until a charge has been framed there is no trial but only an inquiry. It would thus appear that in warrant cases also there is enlargement of the powers of transfer contemplated in the Government of India's letter. It follows from the Bombay decision that the only circumstance in which the trasfer of a case from an ordinary Court to a Special Court would be of doubtful validity is where the trial of the case has actually ~~doubtful validity is where~~ the

begun before the date of transfer. Mr. Justice Divatia is inclined to hold that such a transfer would not be legally justifiable. The Chief Justice has, however refused to express an opinion on the point. The third Judge(WestonJ) also did not express any opinion on the point in question but agreed generally with the Chief justice. But such clause of cases will be few and far between, and there are none so far as this Province is concerrned. The Bombay decision on the whole supports the view taken by the Legal Department. It is a decision based on sounder principles than those on which Allahabad, Patna and Nagupur decisions are founded and may well be commended to the notice of the Government of India

Sd/-
9/2/

Remembrancer of Legal Affairs.

U.R.to H.D. No.1020 dated the 10th February 1943.

M.R.D.
9/56

Submitted.

The question for the consideration of the R.L.A. is whether the article published in the Lok Yuddh dated 31st January 194xx under the headlines "Goodaism is not the path of patriotism; Cruel repression by the bureaucracy; Mean harassment, [illegible] people) in the nname of the 'struggle' falls within the ambit of rule 34(6) of the Defence of India Rules and section 4(1) (d) of the Indian Press (Emergency Powers) Act or any other provisions of law.

2. The first part of the article recites thus:

"British Imperialism has given procication to the whole country by itxx rejection of the just demand or India for National Government" Though the publisher has been careful to disguse it as an attack on the British Imperialism it is likely that an ordinary reader would interepret this as an attack upon the British Govt. and there would be ample justification for such a conclusion as in the next sentence. It is charged with "adding fuel to the the fire by adopton of policy of unrestrained repression." There appears enough justification in the sentence read together for indentifying the "British Imperalism" with the "British Govt." It may, therefore be held that the first part of the article tends to bring the British Government into hatred or contempt within the meaning of rule 34(6) of the Defence of India Rules.

3. It then goes on narrating incidents of firing and imposition of collective fines on people in some of the villages in Gujarat. The following passage is an attack on Govt. for its adopton of means for alleged cruel repression

"The dismal account of repression by Government during the two weeks of January is not less horrifying.

Collective fines have been imposed on the village of ..... And in Ahmedabad firing is being resorted to almost every alternate day. On 1st January man aged 16 was wounded in the chest by a bullet. On 9th firing was resorted to for as many as 12 times. .... Instead of creating a united people's front against such cruel repression..... undiscerning persons with patriotic feeling have adopted a wrong course of acton." This suggests that Govt. resorted to firing and imposed collective fines and it is charged with resorting to cruel repression. It states "Against this repression, they have resorted to acts of sabotage, throwing of stones, acid and bombs. This provides the police with an additional reason for repression. But as a result of this a more dangerous situation has arisen." These are aspersions on Govt. and mis representation of the means adopted by Government for the maintenance of law and order. To suggest that Govt. has resorted to firing and impostion of fines for the purpose of suppressing the demand for independence and not for the maintenance of law and order that acts of sabotage and throwing of stones etc. as a result of cruel repression by Government and calling the people to get together and to fight against such repression would inspire a feeling of hatred and contempt against the

against the Government and would come within the m
the mischeif of rule 34(6)(a) of the Defence of Ind
India Rules and Section 4(1)(d) of the Indian press
(Emergency Powers) Act, 1931.(cf.H.L.A.'s

M.R.D.
14/4/56

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Office of the R.L.A.

The article published in the Lok Yuddh of 31st January 1943 contains objectionable passages which it would be possible to bring within the mischief of rule 34(6)(e) of the Defence of India Rules and section 4(1) (d) of the Indian Press(Emergency powers Act, 1931. But read as a whole it does not appear strong enough for any drastic action.

Sd/-
15/2/-

Remembrancer of Legal Affairs.

U.R. to H.D. (Special)No. 1192 dated the 16th Feb./43

M.R.D.
14/4/56

Submitted.

The question for the consideration of the R.L.A. is whether the leading article in the Yugantar of 31s Jannayy 1943x comparing "America's charge sheet against England with India's charge sheet against Britain" is actionable under rule 34(6)(e) of the Defence of India Rules.

2. It is true that mere incitement of the members to secure independence or " Swaraj" would not amount to an offence under rule 34(6)(e) of the Defence of India Rules(cf.Beni Bhushan Rev. V. Emp. I.L.R. 34Cal.991). Under rule 34(6) (e) of the D.of I Rules, the offence consists in bringing into hatred or contempt, or in exciting disaffection towards(a)His Majesty, or (b) the Crown Representative of(c) the Govt. established by law in Br.India or in any other part of His Majesty(s dominions. The essence of the crime consists in the intention of the accused in publishing the article. The question for consideratio is whether in publishing the article, the publisher intended to bring into hatred or contempt or excite affection towards His Majesty or whether he merely intended to excite disapprobation of certain of measures adopted by Govt. in India. The article gives"America's charge sheet against England " and India's charge sheet against Britan". "Charge sheet is the form of sheet in which the officer in charge of a police station enters the accusations or charge against the persons brought there in custody. (See Iyer's Law Lexicon P.194)

The paper in question quotes an extract from the declaration of American Independence and repeats charges of atrocities and despepotic and tyrennical rule established by the King of Great Britian and in the and it states "our appeals to the British people have failed and, theerefore, we declare ourselves absolutely free from the Birtish Crown," In the second column of the article under the healing"India's charge sheet against Britain" the words found are "Refer to the Defence of India Act". The implication of these words is clear. The intention of the publisher is to bring to the notice of the public what high handed measures were adopted by Britain in America to suppress the aspirations and sentiments of independence in the citizens of America and what measures have now been resorted to in the same direction in India by the British Govt. under the D. of I Act. It appears that the intention underlying the article is to excite disaffection towards His Majesty's or the govt. of India for the measures adopted under the Defence of India Act, and it would appear to fall within the mischeif of Rule 34(6)(e) of the Defence of India of India Rules.

3 In the foot-note the paper publishes the following:-

"We will not rest without achieving the complete freedom".

<u>the pledge adopted by the nation on the banks of the Ravi in the year 1929.</u> This gives publicity to the "Indepedence pledge with a view to assist the operation of the Working Committee of the Indian National Congress which is declared unlawful. It is, therefore, for consideration whether a prosecution should be launched under sec.17(1) of

M. M.
14/4/6

Orrice of the R.L.A.

The article no doubt suggests and is probably intended to suggest that there is in India today Government repression of the nature indicated in the American declaration. But it does not seem definite enough to bring it within the purview of a any of the clauses of Rule 34(6) of the Defence of India Rules. In another reference No. 67-Confl.Ext dated 9th February 1943 the R.L.A. has held that to give publicity to the "independence pledge" is actionable under section 17(1) of the Criminal Laws Amendment Act, 1908. The article appears in its last sentence to refer to this pledge. But a mere reference does not appear to justify action ..

Sd/-16/2/-

Remembrancer of Legal Affairs.

U.R. to H.D. (Sol.) No. 1223.dated the 16th February 1943.

MR.D.

14/4/56

Submitted.

The Provincial Transport Authority, Bombay, states that a large number of undeclared tyres still exist in the market or are being imported in British India from the States where they were taken as soon as Govt. of India arose all tyres prior to the introduction of rubber control. These undeclared stocks of tyres find their way into British India and are purchased through the black market by those who have been refused tyres or who know that they have no claim to a return of tyres. In order to check the use of tyres purchased from the black market, the P.R.A., Bombay, suggests that clause 4 may be inserted to the application for coupons in Form H prescribed by clause 10 of the Motor Spirit Rationing Order, 1941, making it obligatory upon every applicant who wants a basic ratio to declare the number of serviceable or unserviceable tyres he has on his car or as spares.

2. The Sec. H.D., however, is of opinion that inclusion in an application form for petrol an item requiring particulars regarding tyres is of doubtful legality, because.

(i) this subject has no connection with motor spirit rationing at all; and

(ii) the Provl.Govt. has no power to amend the H form which is prescribed as part of the rules issued by the Central Govt.

The question for the consideration of the R.L.A. is whether in view of the objections

urged by the Sec. H.D. in his note dated 9-2-42, the proposed amendment of Form H to the Motor Spirit Rationing Order, 1941 , can legally be made by the rovl. Govt.

3. The Motor Spirit Rationing Order, 1941,, has been by the Central Govt. under rule 71(2) of the Defence of India Rules (videclauses (a) and (f). Clause 9 of the said Order provides that there shall be three classes of coupons viz, special, ordinary and supplementary. Under clause(10(1), any person wishing to obtain coupons authorising the supply of motor spirit for a vehicle or vehicles shall makex an application in Form C,H,I,J,K, or L as set out in First Schedule, as the case may require, to the Area Rationing Authority having Juri-sdication in respect of the vehicle or vehicles in connection with which the coupons are required. The application shall give full particulars of the vehicle or vehicles or service of stage carriages for which the motor spirit is required. The words underlined enjoin on the applcant to give in his application the particulars or details of the vehicle orvehicles for which the motor spirit is required. The particulars of the vehicle or vehicles appear to be the same as those mentioned in sub-cluse(2) of clause 10. Under clause 10(2) an Area Rationing Authority may, before sanctioning the issue of the coupons in connection with any vehicle,, require tobe satisfied by the applicant that in the case of a motor vehivle

(a) it is registered under the Motor Vehicles Act, 1939, and

M. M.B
16/4/56

Office of the R.L.A.

The note of Secretary H.D., dated 9th February 1943 raises the material objections to Mr. Kothaval Kothavala's proposal. Those objections are valid. It is not possible as the Motor Spirit Rationing Order stands to obtain the infromation required. Nor is it possible for this Government to amend the order in this case. The method adopted by the Punjab Government to solve the problem does not see to be open to any legal objections.

Sd/-
19/2

Remembrancer of Legal Affairs.

U.R. to H.D. No. 1323 dated the 19th February 1943.

MR.D.
16/4/56

Office of the R.L.A.

It appears that in the issue of the Times of India dated 15-1-1943 the followint advertisement appeared:- "Gromo,Craft, priniting ,poster papers chemicals dye stuffs, starches large quantities available - Utility Traders, People's Building, Phirozshah Metha Road, Bombay ". Acting on this advertisment J. Walter Thompson Co. (Estern) Limit made enquiries with Messrs. Utility Traders and learnt that 500 reams of printing paper size 30,40 or 54 lbs. at Rs.1-14-0 per lb.could be made available for sale from a certain stockist. The rate offered being higher than the controlled rate J.Walter Thompsons Co.Ltd. brought it ito the noti of the Additional Under Secretary, Home Department for action. Whereupon an order sub-rule(5) of rul 75 A of the Defence of India Rules was issued on 19-1-1943 requiring Messrs. Utility Traders to fur nish within four days thereof to the Additional Under Secretary H.D. information regarding the full and correct name, address and descripton of the owner of the stock of printing paper of the size of 30X40of 54lbs. and not to dispose of any stock of paper in their possession till the expiry of 21 day from the date of receipt of that order. Finding th the reply given by Messrs. Utility Traders that the did not stock any kind or paperx and that their business was simply to solicit enquiries for all kind of papers along with various other commodities and then submit their quotations after fixing the

and then submit their quotations after fixing the the rates with the wholesale merchant reserving their commission, was evasive and unsatisfactory the Additional Under Secretary, H.D. issued on 23-1-1943 another order under sub-rule(5) of rule 75A, clause(e) of sub-rule (2) of rule 81 and sub-rule (1) of the 116 of the Defence of India Rule requering Messrs. Utility Traders to furnish to him information regarding the full and correct names, addresses and descriptons of stockists or wholesale merchants whose stocks of papers the said Messrs. Utility Traders were offering for sale publicly or whom Messrs. Utility Traders might know to posses stocks of papers. In reply Messrs. Utility Traders repeated what they said and offered their books of account for inspection. J. Walters Thompson Co.Ltd.have no official record of communications with Messrs. Utility Traders bevond the telephonic coversations and the contact their representative had with Messrs. Utility Traders in that connection. The questions raised for the consideration of the R.L.A. are:-

(1) Whether Messrs. Utility Traders can be prosecuted for breach of Government order served on themk if not,

(2). What furtner orders should be served on them so as to make them supply information to Government as to who has got what papers and to prosecute them if they do not.

2. The advertisement appearing in the issue of the Times of India dated 15-1-1943 only states that large quantities of print ing and poster papers were available but it gives no details regarding the size and the stockists. On the basis of the information supplied by J.Walter Thompson Co.Ltd.that Messrs Utility Traders offered to procure 500 reams of printing

printing paper of the sizw of 30x 40 of 54 lbs. the Additional Under Secretary issued the orders dated 19-1-43 and 23-1-1943. It appears now that J. Walt Thompson Co. are not in possession of any documenta evidence to substantiate the allegations about the said offer. That being so, there would hardly be any justification for prosecuting Messrs.Utility Traders under rule 81(4) of the Defence ~~prosecuting Messrs.-Utility~~ of India Rule for quoting a price for paper in excess of the maximum fixed by rule 81 (2) (b) of the Defence of India Rules. Moreover, th orders issued on 19-1-1943and 23-1-194[illegible] not specify that the informaton required to be furnished related to the available stock of paper advertised in the issue or the Times of India dated15-1-1943 and consequently the anfromaton supplied in pursuance of the said orders cannot be said to be false. Consequently there has been no such breach of the orders dated 19-1-1943 and 23-1-1943 as to make a prosecution of Messrs. Utility Traders tenable.

3. If Government desire to geb information fro Messrs Utility from Messrs. Utility Traders about the stock of paper advertised in the issue of the Times of India dated 15-1-43 it appears necessary to issue an order under rule 116(1) requiring Messr Utility Traders to furnish or to produce to any specified person or authority informaton regarding the available stock of paper as advertised in the aofresaid issue of the Times of India. But it is doubtful whether this would produce any

produce anything more satisfactory than the list of wholesale dealers which Utility Traders have already furnished. An order under rule 116 of the Defence of India Rules requireing this firm to furnish to Government certain information about all its furture sales of paper whether as principal or agent would provide some check on the firm's dealings.

Sd/-
17/11

Remembrencer of Legal Affairs.

U.O. to H.D. (Poll) A.H.P.No.1322 dated the 19th February 1943.

M.R.D.
16/4/56

Submitted.

The sub-Inspector of Police, Ghoda, District Poona, reports to have attached some bags of Sugar alleged to have been removed from Bombay in contravention of Order No11/7 dated the 22nd December 1942 issued under rule 81 (2) of the Defence of India Rules. The sub-Inspector of Police desires to know whether the person violating the order can be prosecuted at Poona. The view of the F.D. (Supply) office is that the person can be prosecuted either at source of despatch or at the place of destination where the goodd are attached.

2. The question for the consideration of the R.L.A. is whether a person removing sugar from the City of Bombay in contravention of the Order issued under rule 81(2) of the Defence of India Rules can be prosecuted at Bombay or at the place of destination.

3. Under section 177 of the code of Criminal Procedure, 1898, every offence shall ordinarily be inquired into and tired by a court within the local limits of whose jurisidiction it was committed. The word."ordinarily" indicates that this section is a general one and must be read subject to the special provisions of the succeeding section. Section 179 applies where the act done and consequence following that act must enter into the defintion of the"offence" the commission of which is complained against. But where the offence is complete in itself by reason of the act having

act having been done and the consequence is a mere resultof it which was not essential for the completion of the offence, then section 179 would be inapplicable. The ofence under rule 81(4) of the Defence of India Rules was complete the moment the bags of sugar were removed from the limits of the City of Bombay without a license and it does not appear that section 179 would be applica____ Though the facts are not clear it may be regared ed as an offence committed in the course of a Journey under section 183Cr.P.C. When a doubt arises as towhich of the two courts sub-rodinate to the High Court should inquire into or try the offence, it shall be decided by the High Court (see sec.185(1). Section 531 Cr.P.C. however provides that no finding, sentence of order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or pased, took place in a wrong sessions division,district, subdivision or other local area, unless it appears that such error has in fact occasioned a failure of justice.

4. Special provision is, however, made in rule 130 of the Defence of India Rules for taking cognizance of alleged contravention of the rules. Under sub-rule (1)of rule 130,no Court or Tribunal shall take cognizance of any alleged contravention of these rules, except on a report in writing of the facts consitituting such contravention, made by a public servant. Under sub-rule (2) proceedings in respect of contravention of the provisions of these Rules alleged to have been committed by any person may be taken before the appropriate Court having jurisdiction in the place where that person is forr the time being. Under this rule the appropriate Courtx having jurisdiction will be the Court of the place where the person for the time being

In each case, the question of jurisdiction will be a question of fact. If is the case under consideration the person who contravened the order issued under rule 81(2) of the Defence of India Rules is for the time being in Poona, he can be tried at Poona. The provisions of this rule will prevail over anything to the contrary contained in the Code of Criminal Procedure, 1898(see section 3 of the Defence of India Act,1939).

Sd/-
17/2

S.A.S.

Rule 130(2) of the Defence of India Rules will have no application as it relates to the contravention of the provisions of the Rules and not of any order thereunder. It is not known why the Government of Indi did not amend rule 130(2) also when rule 8 and other ru rules were amnded. The position as it stands would be that in the absence of any special provision, the provisions of the Criminal Prodedure Code regarding the venu of trial would apply.

3. Section 177 of the Criminal Procedure Code Provides that every offence shall ordinarily be inquire into and tied by a court within the local ~~limits~~ limits of whose jurisdiction was committed. The offier in the present case prohibited the removal by road rail or sea of sugar from Bombay. The offence or the breach of that order took place as soon as the person removed the bags sugar from Bombay. In other words it means that no offence was committed so long as the bags of sugar were were inBombay. It appears therefore that the offence

that the offence took place outside Bombay and consequently it is doubtful that the person can be validly tried in Bombay Under section 182 of the Criminal Procedure Code. When it is uncertain in which of the several local areas an offence was committed or where the offence is committed partly in one local area and partly in another area or whether an offence is a continuing one and continues to be committed in more local areas than one etc.it may be inquired into or tried by a court having juisdiction over any or such local areas. This section applies to cases where the offence is a continuing one, so that if A steals buffalo in District W and takes it through District X into District Y, he may be tried for theft in any of the three districts through it is beyond doubt that District W would be a proper place of trial(65I.C.994;Hari Rao's Cr. procedure Code P .585). In the present case the person has removed sugar from Bombay through Thana and Colaba district into Poona district, Consequently threre would be no legal objection to his trial in the Poona district. Moreover section 531Cr.Procedure Codd provides a sufficient safeguard.

Sd/-
18/2

A.L.R. It may be shortly said
The place of trial in this case may be either
Bombay or Ponna District

Sd/-
19/2

R.L.A.

Sd/-
22/2

Office of the R.L.A.

The place of trial in this case may be either Bombay or Poona

(8)

Office of the R.L.A.

The place of trial inthis case may be either Bombay or Poona District.

Sd/-
22/2/-

Remembrencer of Legal Affairs.

U.R. to F.D. (Supply No.1407dated 23rd February 1943.

submitted.

2. The F.D. (Supply)Order No.316(a) dated 14-1-43 has been issued under rule 116 of the Defence of India Rules. Rule 116 of the D.of I. Rul provides that the Provl. Govt. may by order requir Acquire any person to furnish or produce such information or article in his possession as may be specified in the order.

Accordingly the Govt. has issued order No.316 (a) dated 14th January 1943 requiring every person in the City of Bombay and the B.S.D. to furnish to the the Director of Civl Supplies(Statistics Section), Bombay every Tuesday a full and correct statment in the form thereto aspended of the stocks of sugar etc. held by him on his own account or on account of or in partnership with any other person etc. The question for R.L.A.'s consideration is whether the word"held" used in the order refers to possession or to ownership.

3. The words used in the order are "held by by him on his own account or account of or in partnership with, any other person" The words held by him on his own account " denote absolute ownership the words" held by him in partnership with any person denotes joint ownership and the words held b him on account or any person denotes that the person is not necessairly the owner but that he is in physical possession of the articles in question whosoever may be the real owner thereof. As the object of the

As the object of thex rule 116 under which the order has been issued is to obtain infromation in the public interest the question of ownership is immateraial.

There is a special heading under item 5(1)(b) of the form appended to the order for denoting the quantity of stock held on account of other person. The form appended is clear by itself. The view taken by the Addl.D.C.S. is correct.

Sd/-
17/2

S.A.S.

"Is held" whenused in relation to property embrances the idea of actual possession(of Iyer's Law LexconP.522)

Reply may be:-

A papers seen and returned

The view taken by the Addl.DCS in the concluding part of his note at p 2 ante in correct A

Id/-R.T.K 20/2

A.L.R. Reply may be S.A.S.'s note

It is possible to imagine cases when neither the possession nor the ownership is with the householder. For example a lodger might have stocks in the houselfholder's house But the lodger could be required under the order to give particulars and presumably could be asked to do so. I have made a slight addtion to S.A.S.'s reply to this point.

I think it would be safer to leave out the addition made by A & R whosoever holds stocks housewoner or lodger will have to declare

Sd/-
22/2

R.L.A. I think whosoever holds stock houseowner or lodger-will have to declare be safer to leave out the addtion made by A.L.R. Reply may be as at A-A

Sd. 28/2

M.R.D.164

U.R.toF.D.(Supply)No,1431Dated 24-2-1943

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether the prohibition contained in F.D. (Supply) Order No.390-II dated 30-1-1942 issued under the provisions of clauses(a)and (r) of sub-rule(2) of rule 81 of the Defence of India Rules, applies to the following cases:-

(i) the daily feeding of poor people of the Muslim community approximately 300-400 in number by the Trustees of the Charitable Trusts of Haji Currim Mahomed Sulleman;

(ii) the provison on all working days of free midday meals to about 250 poor students attending the Jeejeebhoy Dadabhoy Charity Funds School in Bombay out of the said Jeejeebhoy Dadabhoy Charity Funds; and

(iii) the provision on all working days of a free mid-day meal to about 430 poor students attending the Byramjee Jeejeebhoy Parsee Charitable Institution out of the charity funds.

2. The Order in question provides that "no person or persons acting as host shall, with effect from 6-2-43, distribute or cause to be distributed on any one day at any party, entertainment or function, religious, social or otherwise, in the City of Bombay or the Bombay Suburban District any eatables to fifty or more persons. For the present cases the important inquiries in the

important ingredients in the Order are that the person or persons who distribute or cause to be distributed on any one day eatables should be

(a) acting as host; and

(b) that the distribution of eatables should be at any party, entertainment or function religious, social or otherwise.

"Party" means a number of persons gathered together for social pleasure or invited to a social entertainment; a select company, as a dinner party; also the entertainment or gathering itself (Webster's New International Dictionary). "entertainment" means the act of furnishing accomodation, refreshment, good cheer or diversion; mental enjoyment instruction or amusement afforded by any thing seen or heard, as a play etc. the act of receiving a host hospitable reception, hospitable provision, for the wants or a guest; a public reception, the receiving and accommodating guests etc. (P394 Iyer's Law Lexicon). It has also been defined as "hospitable provison for the wants of a guest" (P.665 of Black's Law Dictonary). "Function" means a public or social ceremony or gathering, a festivity or entertainment; a religious ceremony especially one of a particularly impressive and elaborate character (Webster's International Dictionary). The terms are no doubt elastic and incapable of exact definition but the feeding of poor Muslims and of poor Parsi students in Schools by Trustees in accordance with the provisions of Trust deeds executed by the Donors of the Trust can hardly be said to be at any "party, entertainment or function". Further the word "host" contemplates the relationship of "host" and Guest". ~~[illegible]~~ Such relationship dies not appear to

does not appear that any of the three cases referred to by the D.C.S. would fall within the scope of the Order in question.

Sd/-
26/2

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply) No.1478 dated the 26th February 1943.

M.R.D.
16/4/56

Submitted:

The question for consideration the of the H.L.A is whether the article headed "The beginning of repression against the Rashtra Sevadal " published in the issue of the Lokamanya dated 4-2-43 falls under caluse(d) or other caluse of sub-section(1) of section 4 or the Indian Press (Emergency Powers)Act, 1931, or under caluse(e) of rule 34(6) of the Defence of India Rules.

2. The first part of the article traces the growth and developmt of the "Rashtra Sevadal "organisation in Maharashta. It is stated that this organisation which is a nationalist in character and advocates national independence, carries on its programme in private premises everywhere that it does not tak upon itself the responsibility of activities of a secrent or unlawful nature. As some of the worker who participated in the work of the Congress had go to jail, the work of the organisation had become sl but as new workers came forward, it began to gather stregth and began to function. It narrates two inc dents in which the Police interfered with the work of the organisation. At the flag saluation of the "Independence Day" held in the premises of the Rash Sevadal at Thana Branch, the police is alleged to arrested the leader and to have made a lathi charg on the volunteers assembled there. Another incid took place at Sholapur where the police removed t national

removed the national flag of the Sarda Branch of the Sevadal and arrested the head of the Branch. Five days later, the Dy. Inspector went to the Hdad Branch, called the leader of the Dal and arrested him. As regards these incidents the article states that whereas a matter of fact neither the Rashtra Sevadal nor the national tri-colour flag has been declared unlawful, it is an unlawful atrocity that Govt. officials should should lay hands on the organization or its flag. It states that offer local officers goto show loyalty in an excessive proporation and consequently theydo such things. The article thenpees on tosay that as the police at Thana, Sholapur at other places acted in the same manner in connectionwith the sevadal, a Suspicion arises that the Provl. Govt. itself must have resolved to crush this nationalist volunteer orgnization. The paper draws its own conclusion from similar incidents having taken places at Thana, Sholapur and at other places and that is why it states" a suspicion arises". It does not appear that any evil design or motive is definitely attributed to Govt., and it does not appear that the first part of the article would come under caluse(d) of section 4(1) of the Indian Press(Emergency Powers) Act or under clause(e) of rule 34(6) of the D of I.Rules.

3. The passage under the heading "Light on the mental attitude of Govt." however, appears tobe mischievous. It states: "While other communal organizations carry on work openly and secretly and on occasion indulge in terrorist acts even against their own bretheren, Govt.does nothing to them, and it strikes a cruel blow of the axe to the Rashta Sevadal organizations. It is clear fromthis that Govt.wants communal organizations and their terrorist conduct for the British Empire to last and does not want the nationalist organization of Rashtra

conduct for the British Empire to last and does not want the nationalist organization of Rashtra Sevad as it openly advocates independence." In this passa serious allegation is made against Govt. that it pampers and promotes the growth of "communal organisations which indulge in the terrorist activities" and seeks to root out "nationalist orgnisations". It is no doubt true that in the following sentences attempt is made to bring it to the notice of Govt. that the repressive policy of Govt. is really sabotaging the war efforts and is irritative to those nationalist people who have not yet joined the civil disobedience movement. But in disapproving the measures adopted by Govt. against the Rashtra Sevadal it was needless to impute motives to Govt. that it wants communal organisations and their terrorist conduct" In considering whether a certain publication comes within the mischief of section4 (1) of the Indian Press (Emergency Powers)Act,1931,one has to look to not merely the words employed or the intention of the writer, but to the effect the words as published are likely to produce upon persons who may be expected

Office of the R.L.A.

The passage marked A in the article at P. 15 ante is mischievous and appears to come within the purview of clause (d) of section 34(6) of the Defence of India Rules and clause (b) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

Sd/-
1/2

Remembrancer of Legal Affairs.

U.R. to H. D. (Special) No. 1533 dated 1st March 1943.

M.R.D.
16/4/56

Office of the R.L.A.

Yarn sometimes means any spun textile fibre used for weaving cloth or manufacturing sewing thread Sometimes it has the wider meaning of any spun textile fibre including sewing thread. The R.L.A. does not know which of these meanings is the commoner or more correct in commercial circles. In section XI of the Schedule to the Indian Tariff Act, 1934, Silk yarn and silk sewing thread are separately listed. But on the other hand it was thought necessary spefically to exclude silk sewing thread from silk yarn. See Item No.47 of the Schedule. The matter therefore remains inconclusive so far as that schedule is cocerned. The notification in question viz. F.D. (Supply)No.422 dated 18th February 1943 used the phrase "All kinds of yarn". That would indicate that yearn is to be taken in its most inclusive sense. Nevertheless it is open to Government to interpret yarn as excluding sewing thread. In that case no license would be necessary.

Sd/-
11/3

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply No.1807 dated the 12th March 1943.

M.R.D.
16/4/56

91 Conf
15-2-43

Submitted.

2. Please see R.L.A.'s opinion No.42concl. dated 22-1-1943 in which the R.L.A. advised that unless proper measures are taken to clear the land and prohibit entry, Govt. or the Military authorities are in grave danger of incurring liability for accidents to civilians. The Commander, Bombay District, to whom the opinion was forwarded by H.D. now inquiries whether the land cannot be made a prohibited area under rule 80of the D.of I. Rules. The H.D. inquires if an order under rule 80(1)(b) is passed prohibiting or restricting the exercise of right or way over the land and of other rights relating thereto which are enjoyed by any person whether by virtue of an interest in land or otherwise, whether legal protection against damage for inquiry caused to any trespasser can be afforded.

3. Rule75-Aof the D.of I. Rules empowers the provinical Govt. to requeition any property for the purposes metioned in the rule. Rule 80 empowers the Provl. Govt. to make order authorising the use of any specified land for naval Military or Airforce purpose specified, There is no objection now to make further orders under rule 80(1) (b) prohibiting or restirict-ing the exercise of rights of way over the lnd already requisitioned and of other rights relating thereto which are enjoued by any person whether by virtue of an interest in the land or otherwise. But it appears that in that case the onwer will have to be paid compensation under sec.19(1)of the Def I.Act.

during such period as may be specified

(Please se para 4 of the Collector's order at p.75ante). Even when action as described above is taken under rule 80(1)(b) and notice warning trespassers against the dangerak involved are placed round the area, these orders cannot be deemed to be adequate in securing the safety of the non-trespassers and trespassers. At the most the orders under rule 80(1)(b) may prevent the owners or other person interested in the land from approaching the area from fear of, being trespassers under thex rules. But if any one is killed within the area of the land the Military authorities will have to prove that proper precautions were taken to ensuring the safety of the public.

Sd/-
22/2

S.A.S. Reply may be:-

The view taken by H.D.(Spl) at p.94ante is correct

A.R.L. In this case an order restricting the exercise of rights over the land cannot be made under Rule 80since there is no principal order under that rule authorising the use of the land. The land has actually been requisitioned under Rule 75A and by virtue of that the Military authorities possess ample powers to stop a restrict the exercise by others of rights over the land. There seems to be no lack of powers in the hands of the Military authorities. The problem is to give the public adequeate notice of the orders and thex danger of contravening them. Notices Placed round the area warning trepassers and others would certainly be advisable. Whether a particular case of accident they would provide adeuqte legal cover is largely a question of fact about

a question of fact about which it would be unsafe to express a general opinion.

I suggest the above.

Sd/-
23/2

R.L.A. Please consider the applicability of rules 859of the D.of I Rules.

Sd/-
29/2

Office of the R.L.A.

In this case an order restricting the exercise of rights over the land cannot be made under rule 80 of the Defence of India Rules since there is no principle order under that rule authorising the use of the land. The land has actually been requisitioned under rule 75A and by virtue of that the military authorities possess ample powers to stop or restrict the exercise by others of rights over the land. There seems to be no lack of powers in the hands of the military authorities. The problem is to give the public adequate notice of the orders and the danger of contravening them. Notices placed round the area warning trespassers and others would certainly be advisable. Whether in a particular case of accident they would provide adequate legal cover is largely a question of fact about which it would be unsafe to express a genral opinion.

Sd/-
6/3/-

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl)No.1658,dated 6th March 1953.

M.R.D.
16/4/56

118 Cong
27-2

Submitted.

2. The question for the consideration of the R.L.A. is whether the printing and selling of rice Cards (Books) of the type referred to on P.15ante is prohibited by clause 6 of the papers Control Order, 1942.

3. Clause 6 of the paper Control Order, 1942, privides that no person shall--

(a) x x x

(b) x x x

(c) Print or make and gratuitously distribute or cause to be distributed any advertising circular of any descripton relating to-

(i) The business of any money leader book maker or commission agent for bets, or

(ii) any pool or competition.

The terms "advertising circular" and "print or make" have been defined in clause 2(a) and 2 (d) respectively of the Paper Control Order, 1942 The specimen copy of the various Race Cards referred to at P.15ante has not been forwarded by the P.D. (Supply). What is prohibited under clause 6(c) of the ~~is the it~~ printing or making and gratuticus distributing of any advertising circular of any descripton relating to the things specified the clause 6(1)(c) and not mere printing or making. The word "and" or the word "make" emphasises that both the acts of printing and gratuitucusly distributing must be present in each case. Since in the clause under consideration, the act of "gratuticus distribution" is absent, printing and selling of the

selling of the race Cards(Books) would not amount to offence under caluse _. The view of the Commr. of Police, Bombay, correct.

Sd/-
1/3

I agree.

Reply may be- The view taken by the Commr, of Police Bombay in his letter at p 15 ante is correct

M.R.D.
16/4/56

Office of the R.L.A.

The view takenxby the Commissioner of Police, Bombay in his letter at P.15ante is correct. The question whether a race card comes within the purview of clause 8(d) of the order has not been considered.

Id/-
P.N.M.
9/3.

Remembrancer of Legal Affairs,

U.O. to F.D. (Supply,) No. 1722 dated 10th March 1943.

M.R.D.
16/4/56

Copy of Express letter No.115 (36)-E.T. (B) /42, dated the 23rd February 1943, from the Government of India, Department of Commerce, New Delhi, to Home Secretary to the Government of the United Provinces. Lucknow.

Reference correspondence ending with your letter No. 11622-C.X. dated 25th December 1942. Prosecution of Mr. Tajandra Singh, Dehra Dun, under rule 98 of the Defence of India Rules.

2. The Government of India observe from the copies of the judgments forwarded by you that the lower court at Dehra Dun convicted Mr. Tajendra Singh under rule 98 of the Defence of India Rules for trading with an Italian prisoner, of war, considering the latter to be an enemy, the accused to regorous imprisonment for period of nine months and to fine of Rs.50.. The Sessions Court Dehra Dun, as well as the High Court at Allahabad. upheld the conviction overlooking the fact that a prisoner of war in India is not an "enemy for the purpose of the trading with the enemy provisions in Parts XV and XVI of the Defence of India rules. (c.f. the definition of " enemy" in rule 97 of these Rules). The Government of India feel that there has been a failure of justice inthis case and would be glad if the Government of the United Provinces would consider if they have no objection, whether the injustice done to Mr. Tajendra Singh should not be mitigated by remitting such portion of the sentence if any, as yet remains to be served by him.

3. In this connection attention is invited to this Department cicular letter to Provincial Government No.16(1)-E.T. 941, dated the 7th February 1941, according to which all prosecution under parts XV and XVI of the Defence of India Rules are to be sanction would be communicated to the Controller of Enemy Trading, Bombay, who would get into touch with the Provincial Public Prosecutor for the purpose of instituting legal proceeding against the party concerned. The procedure laid down in that letter was accepted by the Government of the United Province in their Rural Development Department letter No.550 - R94)/XIIC -198/40, dated the 8th March 1941.

No. S.D. II/-653.
Home Department (Political)-War.
Bombay Castle, 17th March 1943.

Forwarded with compliments to:-
All District Magistrates,
The Commissioner of Police, Bombay,
All Departments of Secretariat
(except the Separate Department),
The Commissioners of Divisions,
The Inspector General of Police, Province of Bombay,
All Deputy Inspectors General General of Police,
All Superintendents of Police,
The Secretary to the Governor,

for information and Guidence

for information.

With reference to Home Department (Political)-War Resolution, No.S.D. /W-985, dated the 1st April 1941.

By order of the Governor of Bombay,

For Secretary to the Government of Bombay,
Home Department.

M.R.D.
17/4/56

Office of the R.L.A.

The question for the consideration of the R.L. is whether it is necessary for a purchaser buying the specified foodgrains in pursuance of a release order to obtain a permit to remove the good from the vendor's godwon to his own place or place of stroage if the quantity amounts to 10maunds or more.

2. It appears that the release order for the sale of frozen goods are issued in the forms as at PP.3,5and 9 ante. The release order is issued under rule 81(2) of the Defence of India Rules and it recites that "Notwithstanding anything contained in Government Notification in the Finance Department (Supply), No. 13(a)dated 8th January 1943
383-II dated 30th December 1942
261 dated 1st January 1943

the Government of Bombay is pleased to direct that Messrs.....shall sell.... bags of maunds

rice at a price not exceeding Rs.....per bag
bajri maund
Wheat

to the following classes of persons etc."
persons

The Finance Department(Supply)Notification No.383-II dated 30th December 1942 restricts any person holding stock of 'bajri' or bajri products exceeding ten maunds in quantity at any godown or place of storage from removing from the said place or disposing of the stocks without the written permission of the Government of Bombay, Finance Department (Supply) Notifications Nos.261of 1st January 1943 and 13(a)

and 13(a), dated 8thJanuary 1943 are in similar term and they restrict the removal or disposal of stocks of wheat or wheat products and rice or paddy except the written permission of the Government of Bombay. The words"notwithstanding anything contained in the Government Notification etc."in the release orders convey that despite the fact that the stocks of whetat, bajri and rice as the case may be, are forzen in prusuance of the said notifications, the person named in the order is authorised by Government to sell the specified quantity of stocks to the persons or clases of persons named therein. There is nothing in the forms of the release orders to suggest that the purchaser purchasing the stock of foodgrains exceeding ten maunds in quantity should also obtain permit for the removal of the stock from the fodown of the vendor to the place of purchaser. Under the release order the person whose goods are ~~of-purchaser. Under-~~ frozen is authorised to sell and the person named therein is authorised to buy spefified quantity at a specified rate and when a person ~~byts~~ buy it is implied that he had power to remove the goods to his place. Such a permission to remove the stocks by the purchaser to his place is implied in the release order itself.

Sd/-
25/3

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No.2202 dated the 25th March 1942.

M.R.D.
27/4/56

Office of the R.L.A.

The Foodgrains Control Order, 1942, made by the Government of India on 21-5-42 was applied to the Province of Bombay on 1-7-42. As required by that Order Messrs. Issak and Co. applied for the whole-sale license on 22-6-42 the application form for a wholesale license supplied to them by the office of the Assistant Director of Civil supplies (Licenses) was returned dul filled in; but unfortunately this application is not traceable on the records of that office. A reminder was received from Messrs. Issak and Co. on 25-12-42 and it was discovered later that no license was issued to them and still they were dealing in control grains. On 23rd September 1942 Government has passed an order under rule 75A(2) of the Defence of India Rules directing that Messrs. Issak and Co and some others should not except with the permission of Government or under its directions either remove from the existing godowns or other places of stroage or dispose of stocks or any portion thereof of the articles mentioned in the Schedule thereto annexed till the expiry of ninety days from the date of the order. One of the articles mentioned in the Schedule is rice. It appears that release permits were issued to Messrs. Issak and Co. from time to time for the sale of rice and they sold rice on such release permits. The question for the consideration of the R.L.A. is whether in spite of such release permits Messrs. Isak and Co. can be prosecuted for selling rice without a license under the Foodgrains Control Order, 1942

2. As pointed out by the R.L.A. in his opinion No. 500, dated 21-1-43, the licenses under the Foodgrains Control Order issued under rule 81(2) of the Defence of India Rules are mainly for the purpose of licensing the profession, namely engaging in any undertaking which involves the sale or storage for sale in retail quantities and incidentally for regulating the transactions undertaking whereas the freezing orders issued also under rule 81(2) are for the main purpose of freezing stocks by prohibiting their disposal except with Government permission and both the orders can subsist side by side since their purposes do not exactly coincide. What is said of the freezing orders issued under rule 81(2)would be equally, if not more, true of the freezing orders issued under rule 75A95). Conseqjently any relase order issued to Messrs. Issak and Co.could not absolve them from taking out a license under the Foodgrains Control Order, 1942. Strictly speaking, therefore, Messrs. Issak and Co.can be held to have contravented the Foodgrains Control Order. But having regard to the peculiar facts of this case the prosecution of Messrs. Issak and Co.does not appear to be advisable. They had applied for a license and even sent a reminder. Still, No license was issued. Nevertheless they were one of the persons whose stocks were frozen and release orders were issued tothem. In the circumstances it is possible to argue that the release orders might have created an impression that there was no objection to selling the article even without a license under the FoodgrainsControl Order, particularly when it was already applied for.

already applied for. Even if the prosecution ended in a technical convicationthe sentence would probably be nominal and there might be some criticism.

Sd/-
20/3

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) No.2060 dated the 20th March 1943.

M.R.D.
18/4/56

Office of the R.L.A.

The question referred to the R.L.A. for consideration is whether it will be competent for the Government to requisition all the godowns at Dana Bunder and thenuse some of the godowns so requisitioned for Government purposesand reallot the remainder among the total number of merchants in accordance with the urgency of their needs for godown accomodations and the relevance of the goods stored to the war effort.

2. Sub-rule(1) of rule 75A of the Defence of India Rules provides that if in the opinion of the Government it is necessary or expedient so to do for securing amont other things the defence of British India or the efficient prosecution of the war or maintaining supplies and services essential to the life of the community the Government may by order in writing requistion any property moveable or immoveable. Sub-rule(2) of rule 75A provides that where the Government has requisitoned ay property nder sub-rule (1) it may use or dealwith the property in such manneras may appear to it to be expedient. It appears that under these provisions it will be competent for the Government to requisition all the godowns at Dana Bunder. The requisitioning of the godowns will nodoubt be in the interest of maintaining supplies and services essen essential to the life of the community and the efficient prosecution of the War. Sub-rule (2) enables Government to use or deal with the property requisitioned under sub-rule (1) in any manner which appears to

which appears to the Government to be expdient. This sub-rule gives wide powers to the Government to deal with the property requisitioned in any manner it likes and therefore there would appear to be no legalobjection to Government keeping some of the godowns requisitioned for its own use and to reallotting the remainder of the godowns to merchants according to the urgency of their needs.

Sd/-
18/3

Remembrancer of Legal Affairs.

A(F). No. 1993- A dated 18-3-43.

M.R.D.
17/4/56

submitted.

2. This is a reference from F.D. (Supply)which wants to know whether readymade clothes are included in the term 'piecegoods' as used in F.D. (supply) Notification No.422 dated 18th February 1943.

3. Piece in textile terminology means a length (varying according to the material) in which cloth or other textile fabric is woven. Thus a piece of Muslin is 10 yds, of calico 28yds. Irish Linen 25 yds. etc. piecegoods mean textile fabrics such as calico,shirtings, Mull etc.woven in recognised lengths(as above) for sale. Cf.the use "The cotton yarn is woven into piece goods either by the hand-loom or power-loom." (Observations from Sir James Murray's dictionary).

4. The term piecegoods is also used in item 48 (3) of the Indian Tariff Act. The classification, printed piecegoods etc. shows that the denotation of the word is "spun yarn" and not ready made cloth etc.

5. In the rules made under the Indian Merchandise Act, 1889(put up below) a list is given of the so called peice goods. It includes cambrics,checks, shirtings, twills, longcloths,drills on the one hand and also dhoties, sarees, chudders on the other. The conclusion therefore seems to be that piece good means spun cloth of specific length no matter whether that length itself is used as an article of apparel etc. such as dhoties, chudders etc or whether clothes are made out of it by cutting

bu cutting that length into various sizes such as drill, long-cloth etc. In any case, it cannot include the clothes made afterwards and hence ready-made clothes cannot come under the term piece-goods. There is also no reason to suppose that the term piece goods is intended in the instant notification in any other sense.

Sd/-
- 13/3

Office of the R.L.A.

The expression "piece Goods" in the F.D. (Supply) notification No.422,dated 18th February 1942,does not include ready made clothes.

Sd/-
25/3

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply) No. 2217.dated the 26the March 1943.

M.R.D.
17/4/56

R.I. 167-Cofl./31-3-43.

Subject to examination by office there is so fa as I am aware no obligation on the part of Governmen to deliver the statutory notice to the Security Pri soner. That is a matter entirely within the discreti ion of Government. Condition 14 of the Security Prisoners Detention conditions Order, 1941, permits a security prisoner in class I to write two and receiv four letters a week and the security prisoner in the class II to write and and receive one letter per week. The term "letter" seems to have been given its ordinary meaning and in the contect cannot be in terpreted as meaning all communications including telegrams, petitions, summons, notices. It is true that under the orders issued by Government security prisoners are not allowed to correspond except on personal and domestic matters. But since the statu tory notice emantes from an office of the commerce Department of the Government of India and its de livery to the security Prisoner can hardly be detri mental to the public interest or safety or the discipline of the Jail. there can be no objection to its bei forwarded to the security prisoner. The question whether the security prisoner on receipt of the noti should be allowed to correspond on matters connecte with the notice is one which does not arise for the present and can be dealt with on merits at the pro per time.

Sd/-

30-3

Submitted.

With reference toR.L.A.'s note dated 30th March 1943. The view expressed by the R.L.A. is correct.

2. Under sub-cluse(7)of clause 14 of the Security Prisone.- Detention conditions Order, 1942, when the telegram is to,or from, Government, it shall be forwarded direct, provided that i the telegram is to,or from , the Central Government, it shall be sent through the Government of Bombay. No parallel provison, however, ismade in the order for correspodence to or from Government and consequently Government is not bound to deliver the statutory notice from the Commerce Department to Dr. Pattabhi Sitaramayya. Moreover from the Notice it is apparent that the Commerce Department do not seem to be aware of the fact thatx Dr. Pattabhi Sitaramayya. is detained as a Security Prisoner. Had this fact been known to that Department very probably the notice would have been addressed to Dr. Sitaramayya under the care of Government of Bombay. Under clause 27of the order however Government may relax av of the conditions or issue special orders in case of any particular security Prisoner or place of detention. It is. therefore, entirely within the discretion of Government to deliver or not to deliver the notice to Dr.Sitaramayya. Perhaps the best course will be to return the notice to the Commerce Department informing them that Dr.Sitaramayya is a Security Prisoner under the Government and hence it was not served on him. If the Commerce Department are still anxious that the notice should be served on Dr.Sitaramayya, that Department would return the notice requesting this Government to forward the same to Dr.Sitaramayya in which case Government may comply with their request and serve the notice on Dr. Sitaramayya.

Sd/-.
3/3

MR.D.
17/4/56

Office of the R.L.A.

There is no obligation on the part of Government to deliver the statutory notice to the Security Prisoner. That is a matter entirely within the discretion of Government. Condition 14 of the Security Prisoners Detention Conditions Order, 1941, permits a Security Prisoner in Class I to write two and receive four letters a week and the Security Prisoner in Class II to write and receive one letter per week. The term"letter " seems to have been given its ordinary meaning and in the contest cannot be interpreted as meaning all communications including telegrams, petitions, summons, notices. It is true that under the orders orders issued by Government Security Prisoners are not allowed to correspond except on personal and domesticmatters. But since the statuotory notice emanates from an office of the Commerce Department of the Government of India and its delivery to the Security Prisoner can hardly be detrimental to the public interest or safety or the discipline of the jail, there can be no objection to its being forwarded to the security Prisoner. The question whether the Security Prisoner on receipt of the notice should be allowed to correspond on matters connected withthe notice is one which does not arise for present and can be dated with on merits at the proper time.

Sd/-
2/11

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.), No.2447 ,dated the 2nd April 1943.

M.S.D.

GOVERNMENT OF INDIA.
DEFENCE DEPARTMENT.

No.28-DC(1)/43. New Delhi, the 28th January 1943.

All Chief Secretaries(except Bombay and the Pubjab)
The Home Secretary to the Government of Bombay.
The Joint Secretary to the Government of the Punjab, HD.
All Chief Comms.(except the Andaman &Nocobar Islands).

Prosecution under Defence of India Rules.

Recently a case occurred in which an accused was charged with committing prejudicial acts as difined in rule 34(6) (h)and thereby contravening rule 32of the D.of I. Rules by (i) take up work and(ii) delivering in the evening a speech exhorting the labours or not to resume work. The facts upon which first charge rested were disclosed in the police challan but the second charge was framed by the trying magistrate on the basis of facts deisclosed in the course of the hearing the speech not having been mentioned in the challan. The trying magistrate convicted the accused on both the charges. On appeal, however the conviction uder the second charge was set aside by the Sessions Court on the ground that a magistrate has no jurisdiction to take congisance of a contravention of the Def I Rules without out a report in writing of the facts constituting such contraventionas required by rule 190( ).

The Govt. of India consider that the view taken by the sessions Court can be contested on the following grounds. The effect of rule 190(1) is to set up a report in writing by a public servant of the facts constituting the contraventionas a condition precedent to the the taking of cognisance of an alleged contravention in substitution for the three alternative condition precedent to the taking of cognisance which are laid down in sec. ~~precedent to the~~ 190(1) of the Cr.Proc. Code, and the question whether a Court which has taken cognisances of a contravention of the rules on a report in writing of one set of facts is competent to charge the accused with a contravention constituted by a different set of facts established in evidence is indistinguishable from the question whether a Court taking cognisance of an offence to which sub-section(1) of section 190 of the code applies is competent to charge the accused withand convict him of an offence constituted by a different set of facts from those alleged in the complaint referred to in clause(a) or the report in writing by a Police officer referred to in clause(b) of section 190(1). The case reported in I.L.R. 12Patna 758 is clear authority for an affirmative aneer to the second question, and an affirmative answer to the first question necessarily follows from the affirmative answer to the second question.

The Government of India accordingly suggest that if any occasion arises in furture the view taken by the Sessions court should be resisted on the authority of the Patna case.

Sd. L.J.D.Wakely .
Dy,Secretary tothe Government of India.

M.R.D.
17/4/56

Submitted.

It is proposed by H.D. to forward copes of a letter from the Government of India Defence Department No.23-DC(1)/43,dated 28th January 1943 for the infromation and guidance of the affairs mentiond on P.7ante. The papers have been shown to the R.L.A. before the letter is issued.

2. It was decided in Baldeo Prasad Vs.King Emperor I.L.R. 12 Patna 758 that where a Magistrate has before him a police report disclosing one offence of which he takes cognizance and if in the course of the taking evidence a different offence is disclosed and he takes cognisance of it, he would be deemed to have taken cognisance of the latter offence, not under clause (c) of section 190 (1) but under clause (b) and therefore he is competent to hold the trial in respect of the new offence disclosed. The wordin of rule 130 (1) of the Defence of India Rules is similar to that used in clause(b) of section 190 (1) of the code of Criminal Produre. Section 14 of the Defence of India Act. 1939,provides that save as otherwise expressly povided by or unier this Act the ordinary criminal and civil courts shall continue and shall continue to exercise jurisdiction (cf. section 10(8) of the Defence of India Act.).See also privisions of sub-rule(3)of rule 130where the privisions of the Criminal procedure Code have been departed from. From these privisions it

From these privisons it appears that the proceedings of offences committed under the Defence of India Rules are to be according the Criminal Procedure Code unless it has been otherwise provided. The interpretation of section190(1) as given in I.L. R. 12patna P.758 will govern preceedings under section 130(1)(a)of the Defence of India Rules. The proposed endorsement at p.7may issue.

Sd/-
17/2

S.A.S. Pl.see p.611 of Hari Rao's Cr.Pr. Code where this point is considered. The view taken by the Govt.of India is correct. Papers may be seen and returned.

Sd/-
19/2

A.L.R. I do not understand why an appeal was not filed in the proper High Court against the sessions Judge's order of requittal. That is the obvious step not the issuing of such a letter to the Prov.Govt.

I doubt the propriety of issuing such a letter The D. Ms will issue corresponding letter to all magistratee and althou gh the G.of I letter merely says the S.G.'s judgment can be contested, it may the judgment of some magistrates. Some D.Ms too may add tothe letter. It seem the instructions should be issued though the D Ms to public prosecutors and Police prosecutors rather than Magistrates.

Reply may be:-

On reconsideration I think reply should be merely

seen and returned

Sd/-
25/2

R.L.A. Sd/. 1/3 1/3

M.R.D. 17Ø4/56

Letter.

No. 1683
Legal Department.
Bombay Castle, 9th March 1943.

To

The Chief Secretary to the Government of Madras.
Madras.

I am directed to request you kindly to forward an uncertified copy of the judgment given by Mr.Justice Harwil of the Madras High Court in criminal revision petition filed by Mr. N.Satyanarayana Murthi of Chirala, whowas convicted and sentenced to six months imprisonment by the sub-Divisional Magistrate,Ongole, for asking the shop-keepers to close their shops. From the report of the judgment appearing in the"evening News of India" a paper published in Bombay.Mr. Justice Harwil appears to have taken the view that the lower court had no jurisdiction to take congisance of an offence not mentioned in the charge-sheet.

Sd/-

for Secretary to the Government of Bombay,
Legal Department.

M.R.D.
17/4/56

GOVERNMENT OF MADRAS
PUBLIC (GENERAL) DEPARTMENT

From S.V. RAMAMURTY Esq., C.I.E., I.C.S.,
Chief Secretary to the Government of Madras.

To The Secretary to the Government of Bombay,
Legal Department .

Dated, Madras, the 20th March 1943.

Sir,

Criminal Revision case-Judgment given by Mr. Justice Horwill of the Madras High Court-

Ref:- Your letter No.1683, dated the 9th March 1943.

I am directed to enclose a copy of the judgment given by Mr. Justice Horwill of the Madra High Court in Criminal revision case No.75of 1943.

Your obedient servant,

Sd/-

Chief Secretary to Government

MK/22. 3. 43

MR.D.
17/4/56

In The High Court of Judicature at Madras
Friday, the twenty sixty day of February,
One thousand nine houndred and forth three

Present:-

The Honourable Mr. Justice H o r w i l l,
Criminal Revision Case No.75 of 1 9 4 3.
(Criminal Revision petition No.71 of 1943)

Merella Satyanarayanamurthi. .... Petitioner,(accused).

Petition under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of Session of the Guntur Divison dated 9-1-1943 in C.A. No.129 of 1942 preferred against the judgment of the Court of the Sub Divisional Magistrate of Ongole in C.C.No.144 of 1942 dated 21-12-1942

This case coming on for hearing, upon perusing the petition and the judgments of the lower courts and the record in the case and upon hearing the arguments of Mr.V.T. Rangaswami Ayyangar and Mr. K.S. sankara Raman, Advocates for the petitioner and of the Public Prosecutor onbehalf of the Crown, the court made the following

Order:- A report or charge-sheet was filed by the Sub Inspector of Chirala in the Court of the Sub-divisional Magistrate of Ongole in which several offences punishable under section 7(1) of the Criminal Law Amendment Act were disclosed. The warrant procedure was adopted; but a charge was framed with regard to an offence not mentioned in the Charge-sheet. Upon that offence being proved to the satisfaction of the Sub Divisional Magistrate, the accused was convicted. His appeal was dismissed byx the sessions Judge of Guntur. The question is whether in view of the second clause of section 7(1) of the Act, the trial Court had jurisdiction to convict the accused.

Section 7(1) say that "No Court shall take cognizance of an offence punishable under this section except upon a report in writing of facts which constitue such offence....." It would follow that before a person can be tried for an offence punishable under this subsection, there must be a report in writing of facts which constitue such offence. This means that ulness a report is filed disclosing facts which constitue a particular offence, the Court is not entitled to frame a charge and try an accused for that offence. The argument of the learned Public Prosecutor is that since a number of offences punishable under the section were disclosed by the report, the Magistrate had cognisance under their section and having cognisance, could try the accused on any charge disclosed by the evidence, although it might not have been constitued from the facts set out in the report. I find it difficult to accept the agguement. Many offences punishable under section 7 may be committed; but no magistrate can take cognizance of any one of those offences unless that particular offence is constituted by the facts set

by the facts set out in the Sub Inspector's report. It seems to me to follow that as this particular offence of compelling shop-keepers to close their shops was not indicated in the charge-sheet, the Court was not at liberty to try the accused for that particular offence. The acceptance of the larned public Prosecutor's argument would mean that a report disclosing an offence of which an accused person may be completely innocent could be used as a basis for his conviction of an offence regarding which their had been no report at all, which would lead to the evansion of the safeguard that the Legislature thought necessary to impose that a person should not be tried for an offence unless there was a report by a police officer of a certain rank setting out the facts which constitute that partic lar offence.

The petition is allowed and the conviction of the accusaside. His bail bond will be cancelled.

Sd/--K.N.Ganapati,
Dy.Registrar, App.Side.

(True copy)

Sd/.....
Sub Assistant Registrar, App.Side.

M.RD.
17/4/86

Office of the R.L.A.

Attention is invited to the accompanying copy of a judgment of the Madras High Court. The judgment is perhaps distinguishable from the Patna High Court case on which the Government of India relies. But altogether the legal position seems doubtful and it seems hardly advisable to issue a circular until the Sessions Judge's view has been more clearly rejected by a higher court.

Sd/-
6/4

Remembrancer of Legal Affairs.

U.R. to H.D. (Special)No.2852 dated the 8th April 1943.

MR.D.
17/4/56

Submitted.

2. The Kapadwanj Electric license was revoked by G.R.No.4743/36 dated the 3rd April 1941. The revocation took effect from 3rd July 1941. The option of purchase of the undertaking given by sec. 6(b) of the Electricity Act was not exercised by the Kapadvani Municipality within the period of three months prescribed by the section. Govt. also does not want to purchase the undertaking of the license. The license was therefore asked by a Govt. letter dated 16th February 1942(at P.296) to dispose of all buildings, works, material belonging to the undertaking with in a period of six months from the date of receipt of the letter by him. That period was extended first by three months by Govt. letter at P. 343 and then by a further period of three month by Govt. letter at P.353 ante. In both the letters the company was specifically informed that no further extension would be given. It now appears that one Manilal Bhaishanker, one of share holders of the company has applied (p.355) to the Dist. Court of Kaira for winding up the business of the Company. The court has appointed a provisional official liquidator to take chage of the company's properties and had fixed 27-2-43 as the date for hearing the petition. The said share-holder has applied to Govt. (P.365) to extend the period granted in Govt. letter at P.353 ante for a further period of three months. The Govt. proposes to inform the applicant that Govt.

applicant that Govt. does not desire to give any further license in respect of the area and therefore is not prepared to grant any extension of time. As the proceedings in respect of the undertaking are pending in the District Court. the R.L.A. id requested to see the proposed reply.

3. There is no objection to issuing the proposed reply. As the Provisional official liqudator has been appointed by the Court under section 175 of the Indian Companies Act, to conduct the affairs of the Company with a view to liquidation, no personexcept the offical liqudator can make any application to the Govt. inthe matter of the undertaking of the Company.govt. is not prevented by the fact that an official liquidator has been appointed from exercising its right of causing the works of the license in, under or over any street to be removed and of causing every such street to be reinstated under the proviso to clause (f) of section 5 of the Act. The papers may be seen and returned.

Sd/-
13/3

S.A.S. "A" may be done

Sd/-
15/3

A.L.R.

U.R. to P.&D. No 2723 Dated 14-4-1943.

M.R.D.
17/4/56

Submitted.

2. This is a reference from the Commissioner of Labour who wants to be enlightened whether deductions from from the wages of an employed person for his suspension from duty are permissible under the Payment of Wages Act. 1936. He also wants to know whether suspending a person will be tantamount to imposing on him a fine and that the limit imposed as given by section 8(4) of the Act would therefore apply.

3. The term wages has a special meaning under the Payment of Wages Act. As defined in sec.2it means all remuneration, capable of being expressed iin terms of money, which would, if the terms of the contract of employment, express or implied were fulfilled, be payable whether conditionally upon the regular attendance, good work or conduct or other behaviour of the perons employed, or otherwise, to a pereonemployed in respect of his employment or of work done in such employment " It is the total sum sum payable if the contract were fulfilled that it to say the term wages does not connote here the proportionate amount actually due for the work done but it is to be takne at premium in so far as to include the full amount that would be due to the employee after the fulfilment of the contract notwithstanding whether he had actually completed it or not. One of the coluses of the definition gives out that the wages are to be calculated irrespective of the condtion of regular attendance, good conduct etc.

It is therefore clear that even when the person is suspended for bad conduct or irregular attendance the wages for that period will be wages within the definition. It will be hazardous to argue therefore that a person is not in actual service when he is under suspension and draws no such wages during the period which will be governed by the provisions or this Act. The wages that would have been paid to a person if he were not supended are the wages within the meaning of the Act.

4. The question is thus essentially one of deduction in wages sec.7(2) ennumerates the authorised deductions that can be made in wages. Sub-clause(b) permits deductions for absence from duty." But the expression"absence from duty"is qualified by section 9(i) of the Act. Deduction may be made only on account of the absence of an employed person from the place or places where he is required to work. It would have been possible to lay stress on the words place of places where an employee is required to work and to say that the section is meant to permit deduction only when a man is absent from the place of his employment. Meaning thereby that if he is present on the spot but does not work as intimes of stay-in-strike the deductions may not be possible. But the explanation to the section which provides for the contingency of that event, runs counter to the suggestions made above. We are constrained therefore to emphasise the words "on account of the absence of an employed persen" This then provides for deduction on account of the voluntary absence of an employee. The juxtaposition of the wofd'only' adds support to this view. It is therefore settled that the deduction in wages permissible is only when an employer is absent f

when an employer is absent from work out of his sweet will and not whensuch an absence is forced upon him by suspending him.

5. Under section 28(3)(g) power to make rules under sec.9 is given. Sec.9 deals with the absence from duty. Rule 16 of the rules made under it is headed as "deduction for breach of contract." The absence from duty is therefore taken to be equal to breach of contract.

Even in such cases however a notice of 15days or of wage period which ever is less is to be given. Deduction for suspension may be brought under this rule if the statutory notice is served upon him. For that prpose however there must be a .

M.R.D.
7/4/56

Office of the R.L.A.

Looking to the definition of wages in the Payment of Wages Act, 1913 it appears that the answer to the questions referred would largely depend on the terms of the contract, whether express or implied, between the employers and employe employees. Without knowing these terms and the other facts of the particular case or cases which the commissioner of Labour has in mind, it would be unprofitable to enter into a consideration of the questions. According to settled practice, the R.L.A. refrains from answering hypothetical questions.

Sd/-
17/4

Remembrancer of Legal Affairs,

U.R. to P.S.D. No, 2850, dated the 19th April 1943.

W.R.D.
4/56

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether under the Defence of India Act or the Rules thereunder this Government has powers to direct the owners of steamers to load Government grain and deliver it at specified ports for the supply of provision to the people in the Ratnagira district.

2. The relefant provisons are rules 65(4)(c) and 68(1) of the Defence of India Rules. The former provides for the power of the Central Government to make such orders with respect to any vessel or class of vessels for determining the order of priority in which specified goods or classes of goods shall be put off or taken on boradd such vessel or classes of vessels at a port in British India as the Central Government considers necessary or expendent in the interest of the defence of British India and the efficient prosecution of the war or for maintaining the supplies and services essential to the lift of community, while under the latter the Cental Government may be order in writing require the owner or the person having the managment or the master of any vessel registered in British India to place at the disposal of Government the whole or any part of the space or accommodation for the carriage of any person, animals or things to any place specifi d in the order. See also rule 60 which vests the general control of navigation by sea(i.e.outside inland waters) in the Cental Government. It is clear from these provisions that it would be competent for the Central Government

Government, and the Central Government alone, to pass an order directing any vessel to give preference tothe carriage of Government foodgrains to the Ratnagiri District or to reserve a space or accommodation on such vessel for that purpose provided the vessel is registered in British India. See section 1(2)(f) of the Defence of India Act and Section 99(2)(c) of the Government of India Act.,1935.

Sd/-
17/4/43

Remembrancer of Legal Affairs.

A9F) No 28838

Dated 17-4-43

M.R.D
17/4/6

Submitted.

2. This is a reference from the Provl. Paper Controller who wants to know whether the accompanying parmphlet is or is not an infringement of the Provision of chasue 8(d) of the Paper Control Order 1942(put up below).

3. The apmphlet is headed the sporting Times and it gives infromation about the Bombay races. It is 6.5"x4" insize running into 40pages. The total area of the pamphlet measured on one side of each of its sheets including the cover would be thus 520 sq.inches. Clause 8(d) of the paper Control Order provides that no person shall produce or print from paper or wood pulp---------- any programme relating to any entertainment or race or sports or athletic meeting and having a total area greater than 80sq. inches. The pamphlet therefore clearly appears to fall within the purview of clause 8(d)of the Paper control Order. It cannot be said that this is an exception falling within the proviso tosub-clause(c) of clause 3as it cannot be said to be a newspaper as described in the Newspaper Control Order 1942. (Vide spil H.) It does not also appear that the publication comes within any other exception.F.D. (Supply)may therefore be infromed that the publication infringe clause 8(d)of the paper Control Order.

Sd/-
6/2

Reply may be:-

Assuming that the total area of the pamphlet (measured on one side of each of its streets inclu-

including any cover) is greater than 80square inches, the pamphlet is an infringment of the provisions of clause 8(d)of the paper Conrtol Order 1942.

Sd/-
11/3

A.R.R. This point arose in another case incidentlly and R.L.A. deliberately refrained from expressing an opinion because for one thing it was not quite clear that a race card was a programme

The question for the R.L.A.'s consideration is whether the booklet in question is a programme with the meaning of that term as used in clause 8(d)of the paper Control Order 1942. There is no doubt that the booklet exceeds the permitted area for programmes. But it is arguable that it is more than a programme. It is obviously printed in advance of and with reference to the Thrid day of the Bombay Races and there is no doubt that it could serve as a programme. But it does not style itself a progrmme. Its title is"The sporting Times Spefial" It professes to give and does give previous results and records, track notes and tips. It contains two pages of comment and 3 pages devoted to winning owners training jockeys and horses. But 18 of its forty odd pages are degoted to detailed programme of the races for the third day. I think it is essentially a programme and therefore within the purview of the Order. But if it is the intention of the order to restrict booklets of this nature, I think it is desirable to amend clause 8(d) so as to put the matter beyond doubt and give less scope for evasion.

I suggest the above for a reply.

I suggest the above for a reply.

It is ultra cautious. If R.L.A. thinks so reply my be that in infirngs clause 8(d)

Sd/-
13/3

R.L.A.

Since the book includes a programme of races it would I think be difficult to contend that it does not infringe Cl.8(d)

reply as suggested.

Sd/-
21/3

M.R.D.
18/4/56

Office of the R.L.A.

Article published in the issue of "The P
peoples War" dated 11.4.43 under the caption"
Heroes on Eve of Execution." In this article
is no incitement to violence. It is true tha
there is no condemnation of the murder of the
lifeman. But the gist of the article is that
doctrine of constructive guilt has worked an
justice in this case particularly when the pri
ners were enthusiastic Communists keen to play
part if repelling the Japanese. The emphasis
their courage and spirit of martyrdom is clear
an attempt to boost the Communist party and g
adherents. "The People's War" evidently sees
the case a useful piece of propaganda. In the
circumstances the article does not appear to c
within the mischeif of caluse(a)or(b)of sectio
4(1) of the Indian Press (Emergency Powers) Ac

The Notes published on page 2 of the same
issue of "The People's War." The first part o
notes gives an apparently exaggerated report o
bombing of chittagong by the Japnese. Referri
to the Food Crisis the writer has some caustic
comments to make against the Bengal Governmen
policy and states: "The public is reaping the
fruit of Government's new experiment in decont
to attract stocks of rice tothe Market". He f
ther adds that "the distress and total lack of
faith in Government's ability to doanything to
lieve the situation is leading to emigration to

to emigration to Assam, Cooch Bihar, Dinajpur-all in search of a bowl of rice etc." He then observes that "this rapid deterioration of the situation is leading toone thing only food riots, lootings and decoities." Under the heading "Reckless Gamble" the writer proceeds to observe that "It was in the midst of this grain situation that the Governor of Bengal Thoughtlessly plaunted a ministerial crisis in the province. The head of the province and the permanent officials chose the gravest moment in Bengal's life to carry through their vendeta against the Huq Ministry. The crimes of Huq have been many. But he fell because he refused to add yet another crime-namely accept responsibility for the mideeds of officials who were ruling the province over his head." The passages cited above no doubt tend to bring into matred or excite disaffetion towatds the Governor of Bengal and the officials. But as pointed out by the Bombay High Court in the "Janmabhoomi case" it is very difficult to see how the cirticism of the Governor of Bengal and his offeials can do any mischief in the Progince of Bombay. Consequently it does not appear that the notes as such come within the purview of clause (a),(b),(k),or (p)of rule 34(6) of the Defence of India Rules.

Article published on page 3 of the same issue of "The people's War" under the caption" Ceylon Defies the Jap".-

In this articlem the writer states that the increasingly progressive section in the political life of Ceylon are being roused to the danger of passing from the hands of one enslaver into those of another. He fears that the existing political and economic situation is drifting towards disaster,

existing political and economic situation is drifti towards disaster, unless the peole intervene. He f further observes that the present Government of Cey long which he describes as the iron-clad might of bureaucratic monopoly-rule, completely isolated from all sections of the peopleof the Ceylon, is incapable of defending Ceylon against the enemy. Notwithstanding these observations it does not appear that the article read as a whole tends to bring into hatred or contempt or to excite disaffec ion towards the Ceylon Government. It does not appear strong enough to come within the mischief of clause (e)of rule 34(6) of the Defence of India Rules.

Sd/-
24/4

Remembrancer of Legal Affairs.

U.R. to H.D.,No.3041 dated the 26th April 1943.

M.R.D.
19/4/56

Office of the R.L.A.

On 22-12-1942 one bag of rice arrived at Sycu-lla Goods Depot booked to Mr. B.V.Mokal. On the 8th February 1943 Mr. Mokal applied to the Assistant Director of Civil supplies requesting the bag of rice which was still at the Good Depot might be allowed to be removed as special case as it was for his family use only and not for business purposes. On the 9th February the Assistant Director issued the required permit, No.736 issued under Government Notification, Finance Department(Supply) No. 383-II-(a).dated the 30th December 1942. On the 13th February Mr. Mokal addressed a letter to the Food Control stating that he had taken delivery of the bag of rice and requesting permission to consume it. The question thus arose whether a permit for consumption was required. The question thus arose Food Controller's office was inclined to the view that a permit was not required and, as a matter fact, no second permit was issued in this case. However by the time the matter reached the Director of Civil Supplies thex question had taken the form whether the expression "dispose of" occurring in clause(b) of the above notification dated 30th December 1942 excluded use for domestic consumption. The Director of Civil Supplies thought that the matter ought to be referred to the R.L.A.

2. Government Notification, F.D.(Supply)No. 383-II (a) dated 30-12-1942 directs that no perso-

(a) dated 30-12-1942 directs that no person shall-

(a) remove from any railway station or railway goods yard or dock or bunder in the City of Bombay or in the Bombay Suburban District any stocks of rice or rice products, or Jowar or Jowar products or bajri or bajri prodducts received by him at the said place on his own account or on account of or in partnership with, any other person(hereinafter called the said stocks) except under and inaccordance with the conditions of a license granted by the Assistant Secretary to Government, Finance Department(Supply) and Assistant Director of Civil Supplies(General); and

(b) dispose of such of the said stocks as are removed toany godown or other place of storage, without the written permission of the Government of Bombay.

For the removal from the Goods Depot a permit was required under clause(a)and that permit was duly granted. Now clause (b) refers only to stocks which are removed to any godown or other placesof storage. In the present case the bag of rice was presumably taken to Mr. Mokal's house for domestic consumption. For that use, whether it is a disposal or not of the bag of rice, permission was not required under clause (b). The question therefore whethere"disposal" includes domestic consumption was not arise on the facts of this case. The notes also mention Government Notification F.D. (Supply) No.262-A dated 1-1-1943. The notification is in similar terms to the above notification but deals only with wheat. Clause(b) of that notification applies only when the stocks are removed to any godown orother place of storage. It would bot apply whenthe stocks are removed for domestic consumpton to a house. The notes also mention Government Notification F.D. (Supply) No.13(a)dated 8-1-1943. But that notification applies only when the stocks are in excess of 10maunds. In the present case the stocks were less than 10

In the present case the stocks were less than 10 maunds. So far as therefore these Three notifications are concerned no permission was reqired in this case. The question whether 'disposal' of stocks includes use of the stocks for domestic consumption does not arise in this case. The office notes show a tendency to lose sight of the facts of the particular case and to delve into lrge general questions. If there are ny particular cases which raise the general question now referred, the facts may be fully and clearly stated and the matter would then be considered. In the present case it is enough to say that no second permit for consumption was required.

Sd/-
20/4

Remembrancer of Legal Affairs.

U.R. toF.D. (Supplies).No. 2906 dated the 20th April 1943.

R.D.
14/56

Submitted.

2. The fact s in brief are that the Labour Office as to attend to two offices, one, the labour Office situate at Jacob Circle and the other the labour Welfare Department situated at Delisle Road. Both the offices are at a distance of 1½ miles from each other. As the labour Officer(for the reasons given in his letter) finds it very inconvenient to attend to two offices he has proposed to shift the office of the labour Welfare Department from Delisle Road to Jacob Cricle near the premises of the labour Office. For this purpose he has suggested to Government to requisition bungalow No.63at present occupied by Mr. Dhalla under the D.of I. Rules. The P.&.S.D. thinks that such a requistion can be made under rule 75A(1) of the D.of I. Rules on the ground of securing the maintenance of public order. The R.L.A. is requested to advice whether a requisition for the bungalow No. 63 can legally be made under rule 75A9(1) of the D.Of I. Rules.

3. The defence of India Act, 1939,and the rules made thereunder contain special measures for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of War, or for maintaining supplies and services essential to the life of the community. The order under rule 85A9(1) can only be made if any of the objects mentoned in that rule is to be achieved.

is to be achieved. The main reasons for shifting the office are given in brief by the labour Officer in the last para. on P.4 ante. They go to show that the charge of location of the office is desired more for the efficient and smooth working of the offices under the labour Officer and for the convenience and comfort of the Labour Officer than for the maintenance of public order. As a matter of fact the labour Officer has nothing to do with the maintenance of public order which falls within the province of the police. Thex question of a change of location of office is a domestic one and hax nothing to do with an emergency arising out of war. It would not therefore be competent for Govt. to issue a notification under rule 75A (1)of the D.of I. Rules requisitioning the property in question.

Sd/-
31/3

S.A.S. I agree

the requisition being not for maintence of public order action under rule 75A(1)of the Defence of India Rules would not be competent.

Sd/-
31/3

A.L.R. I agree.

Reply may be:-

The requisitioning in the present case cannot be deemed to be for the maintenance of public order. The grounds on which the labour Officer requests the removal of his head office do not appear to justify requisitioning under rule 75Aof the Defence of India Rule.

Sd/- 31/3

M.R.D.
18/4/56

R.L.A. 1/4 Sd/-

Office of the R.L.A.

The requisitioning in the present case cannot be deemed to be for the maintenance of public order. The grounds on which the Labour Officer requests the removal of his head office do not appear to justify requisitioning under rule 75A of the Defence of India Rules.

Sd/-
2/4

Remembrancer of Legal Affairs,

U.R. to P.&S.D., No.2449, dated the 3rd April 1943.

M.R.D.
18/4/56

Office of thec R.L.A.

As the Chief Secretary rightly observes, the question of convenience seems to be the predominant factor in this matter and therefore it would be difficult to support the bone fids of the requisition under the Defence of India Rule 75A. There would however be some justification for requisition if, as the Labour Officer has given personally to understand in an interview he had with me today, it is impossible for him to work at two distant places without seriously impairing the efficient administration of his department and affecting the morale of labour engaged in the war effort. But that is really a matter for P.&S.D. to decide.

Sd/-
20/4

Remembrancer of Legal Affairs,

U.R. to P.& S.D. No,2908,dated 20th April 1943

M.R.D.
18/4/56

Office of the R.L.A.

In pargraph 2 of his opinion No.42-Confl., dated 22nd January 1943, the R.L.A. observed: "Before requisitioning there must have been rights of ways, right rights of grazing and other such rights over these land lands. The mere fact of requisitioning does not abolish these rights. The requisitioning authority may after requisitioning, nodoubt prohibit the exercise of these rights.". The questionraised for the consideration of the R.L.A. is what legal steps are necessary to prohibit the exercise of these rights.

2. Sub-rule(2)of rule 75 A of the Defence of India Rules provides that when Government has requisitioned any property,Government may use or deal with the property in such manner as may appear to it to be expedient. It is obvious that certain uses of requisitioned property would necessarily entail the prohibition or curtailment of the exercise of pre-existing rights over the property. It is competent for the Military authorities to effect by all reasonable means such prohibition or curtailment as is required. What means whould be best in particular circumstances is a matter for the discretion and tact of the military authorities concerned. No particular legal procedure seems necessary. In the matter of avoiding liability for injuries to civilians the prime necessity is to give adequate notice and warning. It is not clear what particular difficulty has arisen to prevent the military authorities making effective use of requisitioned property.

Sd/-

30/4

Remembrancer of Legal Affairs.

U.R. to H.D.,No.190Confl.dated the 1st May 1943.

M.R:D.
18/4/56

Office of the R.L.A.

Under clause 3(4)(c) of the Rent Restriction Order, 1942, the Controller is given no discretion in fixing the rent. The question there is only the determination of the actual rent at which the premises were first let after the first day of September 1949. If the Controller has any discretionin fixing the rent in this case, it must be under clause 3(& 4) (d). If he is acting under (d), it is for him to determine whether the concessional rent should be maintanined or a higher rent fixed. There is nothing in the Order so far as clause3(4)(d) is concerned which compels him to maintain the concessional rent. One consideration is that the concessional rent was fixed by the former landlord and it is not clear why the new landlord should be bound to maintain the fromer landlord's generosity unless there is anything relevant in the terms of the transfer.

Sd/-
8/7

Remembrancer of Legal Affairs.

U.R. to G.D., No.3409, dated the 10th May 1943.

M.R.D.
8/4/56

Order

No. Whereas it is necessary for securing the public safety and the efficient prosecution of the war to requisition the property specified in the Schedule hereto appended:

Now, therefore, in exercise of the powers conferred by sub-rule 1 of Rule 75A of the Defence of India Rules, read with Government Notificiation, General Department,,No.9/1/.dated the 6th August 1943, I,D.S. Bakhle, I.C.S., Director of Civil Supplies, Bombay, do hereby requisition the said property and direct that the possession of the said property be delivered to the Controlier of Rationing, Bombay,on such date after the receipt of this order as he may appoint.

Schedule.

East Wing of the property known as the "Royal Institue of Science,"Bombay.

By ofder of the Governor 's Bombay.

Director of Civil Supplies,
Bombay.

M.R.D.
18/4/56

Office of the R.I.A.

As underthe terms of the Scheme framed under section 5 of the Charitable Endowments. Act,1890, for administering the property known as "The Royal Institue of Sceince, Bombay" it is not legally feasible to use the East Wing of the Institute for accommodating the office of the Civl Supplies Department, it is now propsed to requisition the East Wing under the provisions of rule 75A of the Defence of India Rules. A(F) is of opinion that the order requisitioning the property in question will have to be served on the Treasurer of Charitable Endowments ,while the F.D. (Supply) office considers that it will have to be seived on the Secretary to Government Educational Department, ~~while the F.D. (Supply) effie~~ and the Director of Public Instruction who adminster the property and not on the Treasurer of Charitable Endowments. The question raised for consideration is whether the view expressed by the F.D.(Supply) that the order requisitioning the property under rule 75A of the Defence of India Rules should be served on the Secretary to Government, Educational Department and the Director of Public Instfuction is correct.

2. The Property vests in the Treasurer of Charitable Endowments, while the administratiqn is with the secretary, Educational Department and thee Director of Public Instruction. As regards requisition,rule 75A of the Defence of India Rules, 1939, does not direct that notice should be served on any

notice should be served on any particular person. But rule 119 generally directs that notice of orders should be served on all person concerned. Therefore although it is probably only the Director of Public Instruction who can give any assistance in giving effect to the order, notice should be served on all three officers in accordance withthe provisions of rule 119.

3. The draft order, as amended, is in orde-

Sd/-
12/2

Remembrancer of Legal Affairs.

U. R to F.D. (Supply)No.3482,dated the 12th May 1943.

Submitted.

2. Please see letter from the Director of Industries at P.2. By G.D.G.R. No.4664/33,dated 21-8-42, he has appointed a Yarn Commissioner for the Province of Bombay. ByG.D. Notification No. 24/3, dated 31/7/1942, issued in exercise of the powers conferred by sub-rule (2) of rule 81or the Defence of India Rules, the Government of Bombay prohibited trade in yarn without a licence from the Yarn Commissioner. In consulation with he Yarn Advisory Committee, the Yarn Commissioner decided to grant licenses under the order to those those returns showed to the Commissioner that they were dealing in yarn regularly. Mr.Manilal Maganlal, the proprietor of the Yarn Import and Export Agency, Surat, applied for a licence but was refused on the ground that the form had not been trading in yarn regularly. Now Mr.B B. Modi, advocate, Surat. has served a notice of suit on the Yarn Commissioner on behalf of his client, Manilal Maganlal, for refusing to issue a licence and for damages at the rate of Rs. 1000/-per month till the licence is received. F.D. (Supply) is of the view that the power to grant a licence under the order includes power to refuse it also and so the contention of the pleader that a licence should be granted to any one who applies for it is absurd The R.L.A. is requested to advise in the matter.

3. Para 1 of G.D.NotificationNo.24/3.dated 31-7-42. issued by the Government of Bombay

by the Government of Bombay in exercise of the powers conferred by sub-rule(2)of rule 81of the Defence of India Rules provides that witheffect from 1st September 1942 no person in the Province of Bombay shall sell. store forcsale or carry on business in cotton yarn except under and in accordance with the condtions of a licence in the form in Schedule B granted by the Yarn Commissioner for the Province of Bombay. Para. 2 provides that any person desiring a licence shall make an application to the Yarn Commissioner for the Province of Bombay Para. 3 provides that nothing contained in this order shall apply to (a)the onwer of a textile Mill, or (b) any person selling , storing for sale or carrying on business in cotton yarn spun by himself or the members of his family. It will thus be seen that no person whould trade in yarn afte- the date specified without a licnce botained from the Yarn Commissioner. In Fakir Mahomed v. Municipal Commissioner of Bombay (39Bom.L.R. 536) and Haji Ismail Haji Essac v. The Municipal Commissioner of Bombay(I.L.R.28Bom.253) it has been held that the power of the Municipal Commissoner to grant a licence includes the power to refuse it. The Yarn Commissioner has an absolute discretion to grant or refuse a licence under the order and so long as the exercise of his discretion is not'arbitary,vague and fanciful, but legal and regular' it cannot be called in present case, the Yarn Commissioner appears to have refused to grant a licence to Mr. Maganlal on the ground that his firm had not been trading inyarn regularly in the past. As it has been decided by the Commissioner in consulation with the Yarn Advisory Committee to grant such licenses only to persons trading regularly in yarn, it does not appear that he has acted arbitarily in refusing the same in this case

in refusing the same in this case. It does not appear that the recent judgment of the Bombay High Court in Ratnshaw Nusserwanji Todiwala v. Mc Elhinny in 43Bom.L.R. 899will apply. The contention of the pleader that licences under the order should be granted to every person who applies for it has no force. The view taken by P.D. (Supply) at PP. 1-2- ante appears to be correct.

Sd/-
13/5/-

P.A. There is nosubstance in the contention made by Mr. Modi in the notice given on behalf of his client, Mr. Manilal Magindas, and the treatened suits if filed, can be defended.

Sd/-
13/5

Office of the R.L.A.

The Commissioner has discretion to refuse a license and the suit if filed can be defended. If the Commissioner of Yarn makes any further reply he should be careful not to suggest that in view of the Yarn Advisory Committee's advice he considered that he had no discretion in this matter and must refuse. It is permissible for the Commissioner to accept the Committee's advice when it embodies suitable criteria for such cases and he may apply those criteria to particular cases but he must not surrender his discretion to the Committee. The decision ought to be His, not the Committee's.

Sd/-
15/5

Remembrancer of Legal Affairs,

M.R.D.
18/4/56

U.R. to F.D.(Supply), No.3585 dated the 17th May 1943.

Submitted.

2. The District Magistrate, East Khandesh, enquiries whether there is any section of rule under which confiscation of coin attached in respect of an offence under clause(d)of rule 90(2) of the Defence of India Rules is authorised H.D. (Spl) is of the view that if coins are seized seized unders a warrant issued under rule 124(1), the D.M. can order their confiscation under rule 124(3) read with H.D. (Pol.-War), Notification No.S.D. II/45.dated 7th January 1943, after the case, if any, aganist an offender is decided by the court.. In other cases, if the coins are proudced before a court, it is for the cour to make an order for their disposal after an enquiry or trial is concluded under section 517 Crim.Pro.Code;if they are not produced before a court, a magistrate can forfeit them under sec. 523 (1)of the Code. The R.L.A. is requested to advise.

3. Clause(d)of rule 90(2) of the D.of I Rules provides inter alia that no person shall acquire coin to an amount in excess of his personal or business requirements for the time being which in case an acquisition of coin from the Currency Office. Treasury Sub-Treasury or branch of the Imperial Bank of India doing treasury Business, shall be determined by the officer in charge of the Currency Office, Treasury, Sub-

Treasury, sub-Treasury or branch of the Imperial Bank of India whose determination shall be final and shall not be called in question in any legal proceedings. Sub-Rule (3)provides that if any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years or with fine or both. Under sub-rule (1)of rule 124a D.M.-Sub-Divi.Magistrate, Presy.Magistrate or Magistrate of the first Class has power to seize under a warrant anything found and the provisons of the Code of Criminal Procedure shall, so far as they may be applicable, apply to any seizre made under the authority of a warrant issued under sec. 98 of the Code.Sub-rule (3)of the rule provides that anything siezed under sub-rule (1) shall be disposed of in such manner as the Provl. Govt. may direct. By By H.D.(Pol-War),Notifn. No. S.D.II/15 ,thex Bombay Govt. has delegated its powers of disposal to the Dist. Magistrates within the limits of their respective jurisdiction. It will thus appear that if the coins are seized under a warrant issued under rule 124(1).then the D.M. can order their confiscation under rule 124(3)read with H.D.(Pol.-War), Notifn.No.S.D. II/45, dated 9-1-43 after the case, if any against the offender is decided by the court. But in other cases when the coins are produced before the court, it is for the court to make an order of disposal of the property upon the conclusion of an inquiry or trial,under sec,517of the Code of Criminal Provedure (cf.R.L.A.'s opinon No,2219dated 18-9-1020). An order of disposal under this sectionincludes an order of forefeiture or confisction(vode mitra's Crim.Proc.Code,Edn 10thP.1674). If the coins are not produced before a court ghey can be forfeited under sub-rule(3)of rule 124 of the Defence of India

Defence of India Rules (cf.Imperator vs.Gulamalli Hussain 43Bom.L. R.872 P.876and not under section 524(1)of Code as stated in H. D,office note, as it this section applies where no Claimant appears wit in 6months from the date of

Office of the R.L.A.

The attention of H.D. is invited to the R.L.A.'s opinion (Confidential)No.513,dated 23-11-1942 and the High Court decision in Emperor vs.Gulamalli Hussain 43Bom. L.R. 876. The view taken inH.D. (Spl.)office note dated 9-1-43P.3 ante is correct.

Sd/-
19/1

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.),No.484,dated the 20th January 1943.

M.R.D.
8/4/56

Office of the R.L.A.

On 30th September 1942. the Collector of Bombay issued an order under rule 75A of the Defence of India Rules requisitioning the additional nine flats of the Grants' Buildings at Arthur Bunder Road, Colaba. As,however, the A.R.P. Controller, Bombay,did not require these additional nine flats and required the whole of the Rear Chawls of Grant Grants' Buildings, on 9th October 1942he requested Government to ask the Collector of Bombay to cancel his order in respect ofthe Grant's Buildings a and to requisition the rear chawls. Government accordingly instructed the Collector of Bombay to take steps to cancel his order dated 30th September 1942 andto issue a fresh one requisitioning the rear chawl of the Grant's Building. On 20th October 1942 the Collector withdrew the order dated 30thm September 1942in respect of the nine additional flats of the Grants' Building and alsoissued a fresh order on the same date under rule 75A of the Defence of India Rules requisitioning the whole of the rear chawl of Grants' Buildin both ground and 1st floors. In the said order the Collector of Bombay directed that the possession of the property should be delivered to the A.R.P. Controller, Bombay , on such date as the ontroller may appoing. In his letter No 22805 22805/P.K. dated 24th October 1942,the A.R.P. controller, Bombay, infromed the Chariman H.A.D. Charities, that the vacant possession of the

chawl in question should be handed over to the A.R.P. on 15thNovember 1942. From the letter of the Depot Superintendent, Combined A.R.P. Depot dated 20th November 1942 it appears that the Consulting Engineer of the H.A.D. Charities handed over possession of the chawl to the Depot Superintendennt on 15th November 1942. At the time the possession was taken over, it was noticed that out of a total of 54rooms, including the garages, only 17rooms were vacant, the remainder being occupied by the tenants who refused to vacate till they could find proper accommodiation elsewhere. It appears that the Collector of Bombay took step against the tena nts who refused to vacate the rooms under rule 132of the Defence of India Rules.

2. The Executive Engineer, presidency Division, assessed the monthly rent of the rear chawl of Grant's Building excluding room No.46, at Rs722 per meansem. As on 15th November 1942 the date of handing over possession of the chawl about 36 rooms were still occupied by the tenants, the owners could not give vacant possession of the same to the Depot Superintendent. It was therefore, proposed in the N.D. (Spl.) A.R.P. (E) note dated 10th April 1943 that the amount of rent to be paid to the owners should be proportionately reduced for the period upto date when the vacant possession of all the rooms was obtained. The same view is expressed by F.D.(A.R.P.) The Jt.Secretary, F.D.however, states that the landlords liability ends with the handing over of whatever possession he had as landlord; and that fequistion is complte as soon as he handed over to Goernment his possession as landlord and that it was not his duty to eject tenants or to recover rent from them after that date. He accordingly holds that

ther e

He accordingly holds that the rent for the first period aforesaid be paid to the landlord.

3. On these facts, the question raised for the R.L.A. & L.A.'s consideration is whether the view expressed by the Jt.Secretary (f.D.)that Government should pay the whole rent to the landlord in respect of the shawl from 15th November 1942,is correct.

4. Under sub-rule(1)of rule 75A of the Defence of India Rules, Government may by order in writing requisition any property,moveable or immoveable, and, may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning. Under sub-rule(2), the Government may use or deal with the property so requisitioned in such manner as may appear to it to to be expedient. "Requistion" as defined in rule 2(1) means in relation to any property to take possession of the property or to require the property to be placed at disposal of the requisitioning authority. If,therfore, the owner places the building at the disposal of the requisitioning authority his duty in most cases seems to be completely performed(seeR.L.A.'s No.3893 dated 9thMay 1942(. It is true that the landlord did not comply with the request made in A.R.P. Controller's letter dated 24th October 1942 (Page52). But the requisition order did not require that vacant possession should be given. It was possibbe for Government to make a supplementary order under rule 75A that vacant possession should be given but it did not do so. Rule 122 of the Defence of India Rules

Defence of India Rules might land the Controller's latter some authority. Be whether or not the landlord was under any obligation to hand over vacant possession it seems unreasonable in the circumstances to expect him to be able before 15th November 1942 to secure vacant possession. After the Controller had accepted possesion, the landlord had no authority either to evict or to collect rent from the tenants who remained. The landlord ought therefore to be paid rent for the whole of the chawl with effect from 15th November 1942. The view expressed by the joint Secretary (F.D.) in his note dated 22nd February 1943 is correct.

Sd/-
18/5/43

Remembrancer of Legal Affairs.

U.R. to H.D. No,3637 dated the 18th May 1943.

M.R.D.
18/4/56

5862/41-42=5-43

Submitted.

2. It appears that a complaint against one Shah Deeji Ugam a servant of Murji Kuramsi has been lodged at the Andheri police station for selling sugar above the controlled rate. The A.D.C.S.(L) in his note at PP.7-8 states that the owner of the shop was absent when the transaction took place and therefore he is rather doubtful whether the owner can be joined as a co-accused. The R.L.A. requested to advise in the matter.

3. In Imperator v. Durlabhdas Jivraj Crim. Application No.241/42 (unreported) and in a similar case where the brother of the accused was the owner, Beamond C.J. observed that "A sale, broadly speaking is the exchange of goods for a price, and the actual owner of the goods effects the sale, though he may do it through an agent; but I think also that the man, which actually effects the sale, comes within the prohibition; it seems to me that he also effects exchange of goods for a price, although he may do it on the instructions of somebody else." In view of the these observations of the Bombay High Court it appears necessary in the present case also to join the owner of the shop, though he was absent at the time the sale took place, as a co-accused.

4. The present reference is made by A.D. Cs.(L) who is not authorised to make such references to the R.L.A. under para 104 of the Secretariat instructions. His attention may therfore be invited to that paragraph.

may therefore be invited to that paragraph.

Sd/-
18/5

P.A. I agree

Accused Shaha Deoji Ugam, a servant of Murji Jaramsi sold sugar at Rs.0-4-0a pound i.e. in excess of the maximum rice fixed by Government. He has, therefore, been charged with having sold sugar in excess of the maxiumum price fixed by Govt. The question for consideration is whether the owner of the shop, Murji Karamsi, who holds both bothwholesele and retail licenses should be joined as a co-accused.

2. It is not quite clear whether Shaha Deoji Ugam is is merely an employee working on a fixed salary or whether he is in any way interest in the profits of the shop. As observed by C.J. in Cr. Application No.241/42. "An employee. who has no interest in the profits of the business, can hardly be expected to accuqaint himself with matters which the owner of the businessis expected to know," and the question of sentence would, in such a case, largely depend on the state of knowledge of the employee. If the posttion of the accused in the shop is not merely that of an emplyoyee, it may be assumed that he is a person interested in the profits, of the shop, and consequently acquainted with matters which the owner of the business is expected to know. In inflicting sentence on the accused, therefore , the Court will have to take into consideration the postion of the Accused in the shop.

3. In any case as observed by the C.J. "the actual own of the goods effects the sale, though he may do it through an agent; but I think also that the hand, which actually effects the sale, comes within the prohi bitions;

within the prohibition; it seems to me that he also effects the exchange of goods for a price, although he may do it on the instructions of somebody else." This observation implies that the prohibition applies to the sale whether it is effected by the actual owner of the goods or by his agent. A master is in some cases liable to answer criminally for the acts of his servants. "In criminal matters it is a general rule that every person must answer for his own acts. and the command of no person can excuse illegal act. A servant, therefore, is not generallyspeaking, excused from liability to answer criminally for any violation of the law which he may commit on the ground that he was only acting in obedience to his master's commands..... But where the illegal act charge is merely malum prohibitum, the fact that the servant was acting in obedience to his master's commands would be strong evidence to rebut that prima facia inference of the existences of a vicious mind, which generally arises from the mere doing of an illegal act; and in such cases it may sometimes happen that in this way the command of the master may, in effect, exempt the servant from criminal responsibility for the consequentes of illegal acts done in obeidence to his master's order." (vide P.261 of Smith's New Law of Master and Servant). A master is not, generally speaking, cirminally responsible for the acts of his sergants, unless he expressly command or personally co-operate in them. In criminal cases they must each

they must each anser for their own acts, and stand or fall by their own behaviour. Where onw man expressly orders another to do an illegal act, the employer at least is accountable for that act. Whether or not the person employed is also criminally liable must depend upon circumstances. "If a man employes an innocent agent, for the prupose of committing any crime, the employer is the principal offender and liable to be indicted and punished as such, although he be absent when the crime is actually committed." (Irbid PP. 211.212). apart, therefore, from the observations made by C.J. in Application No.241/1942, in view of the above discussion, the owner of the shop should also be prosecuted as principal offender even though he was absent when the offence was actually committed.

4. Attention of A.D.C.S.(L) may be invited to para 104 of the Secretariat Instructions for his future guidance.

Sd/-
19/5

A.L.R. I agree

Reply may be: -

As a general rule owners should be joined as co-accused in such cases, Absence at the time of sale would not absolve the owner from his obligation to see that goods are sold at controlled price.

Sd/-
20/5

R.L.A. I agree
Sd/-
22/5/43

Office of the R.L.A.

As a generalrule owners should be joined as co-accused in such cases. Absence at the time of sale would not absolve the owner for his obligation to see that the goods are sold control prices.

Sd/-
24/4

Remembrancer of Legal Affairs.

U.R. to Assistnat Director of Civil Supply(L)No.

No.3755.dated the 28th May 1943.

M.R.D.
18/4/56

Submitted.

2. It appears that Mr. Makanji Kalidas of Messrs. Kalidas Vishram &Co.,Bandra, was prosecuted on 21-1-43 for incorrect declaration of stocks of rice on 17-1-43 but was acquitted by the F.C. City Magistrate, Bandra on 8-4-43 as the stock of the rice was received by him only on 18-1-43 and was to bedeclared by him on the next Sunday i.e. 24-1-1943 as required by F.D. (Supply) Notification No.13(b), dated 8-1-43. (Judgment at PP. 49-50) It also appears that on 23-4-43, the inspector on special Duty on examining the account books found that there were entires intialled by the Inspectores which showed that they possessed 33bags of rice on 3-1-43 and 42 bags on 10-1-43 which were in excess of 25Bengal Maunds and declarations therefore should have been made to Govt. as required by G.D.,G.N. No.13(a)(1) dated 22-8-42. The question for the consideration of the R.L.A. is whether in view of the acquittal of the owner of the firm in the above case, he can now be charged for non-declaration of stocks of rice held by him on 3-1-43 and 10-1-43.

3. ByG.D.G.N. No.13(a)(1) dated 22-8-42 issued inexercise of the powers coferred by clause (e) and (f) of su-rule (2)of rule 81 of the Defence of India Rules, the Govt. of Bombay ordered that every person in the B.S.D. shall on every Tuesday beginning beginning with 25th August 1942 furnish to the ~~controller of Prices~~

of Prices (Statistics Deptt.),Bombay, a full and correct statement in the form specified in Schedule II appended thereto, of stocks if any of the articles apecified in Scheudle I held by him on his own account or on account of, or in partnership with, any other person in connction with his business, on Sunday immediately preceding such Tuesday, if such stocks amount to 25maunds (each weighing 82 2/7 lbs.) or more. In the peresent case, it appears that the stocks of rice held by the owner Makanji Kalidas, the owner of Messrs. Kalidas Vishram and Co.on 3-1-43 (Saturday) and 10-1-43 was more than 25Bengal Maunds. It is presumed that he held the same or more stock on 4-1-43 and 11-1-43 and did not furnish to the Controller of Prices (Statistics Deptt.) a full and correct statement as prescribed by the notification referred to above. If so, he can be prosecuted successfully. Section 233 of the Criminal Procedure Code, 1898, provides that every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in cases mentioned in sections 234,235,236and 239. Offences committed on different occasions, even though the offences be of the same kind are distinct offences (cf. Krishnaji Anant 34Bom.L.R.590; Sejamal Punamchand 51 Bom. 310 and other cases referred in Mitra's Criminal Procedure Code, 10th Edition P.803.) Although therefore Makanji Kalidas was acquitted by the Magistrate on 8-4-43 in respect of a similar offence committed by him on 17-1-43, he can it appears be charged again for offence committed by him on a previous occassion when he failed to furnish a statement to the Controller as required by G.D.G.N. NO.13(a)(i)dated 22-8-42.

Sd/-
24/5

M.R.D.
20/4/56

Office of the R.L.A.

The discharge in the previous case would be no bar to a prosecution for failure to submit full and correct statements of stocks for the 3rd and 10thJanuary 1943.

Sd/-
28/5

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) Mp.3874,dated the 28th May 1943.

M.R.D.
20/4/56

Orders of the S.L.A.

It appears that on 6th April 1943. Bhamshali Chhaganlal &Company applied to the Director of Civil Supplies for issue of Removal Permit in respect of 228bags of Bajri which it has imported from outside. Similarly on 7th April 1943, it ag applied for removal permit in respect of another consignment of Bajri of 210 bags. By his letter dated 7th April 1943, the Supply Commissioner informed Messrs Bhamshali Chhaganlal and Company a follows:-

"I have the honour to acknowledge the receipt of your letters No, Nil dated the 6th and 7th April 1943. together with two Railway Receipts as detailed below for four hundred and thirty eight bags (sic) Bajri and to state that these ba bags of Bajri will be pruchased by Government. I am to request to send your bill of cost in re spect of these bags to the Assistant D.C.S.(A m Accounts) for payment through Dr.K.M.Shah. supported by invoice pertaining to this consign ment.....

2. In this connection I may point out that Government will not be responsible for wharfage charges,if any, on these Railway Receipts."

Messrs.Bhamshali Chhaganlal and Company then sent a debit note for Rs.9,084-11-0along with their letter dated 8th April 1943 requesting the Assistant Director of Civil Supplies to pay the amount to the bearer. They also forwarded the invoice pertaining to the consignment with their letter dated 19th April 1943. It appears that Government also pruchased 225bags of wheat from the said Company. From the letter of the Solicitors of Messrs. Bhamshali Chhaganlal&Co.dated 13th May 1943,it transpires tha

it transpires that Government has already made certain payment in respect of the Consignments purchased by Government and which have been accepted by the company under portest as part payments against their claims in respect of the goods supplied.

2. On the above fact, the question raised for the R.L.A.'s consideration is whether it would be legally competent for Government to issue at this late stage orders of requisitioning and acquiring under the Defence of India Rules.

3. Rule 75A of the Defence of India Rules deals with two sets of events: The first set which is the "requisitioning" of the property is dealt with under sub-rule(1)while sub-rule (2)deals with what may happen after the property has been requisitioned. Under Sub-rule(1),Government may merely use the property requisitioned, or it may take the further step of "acquiring" the property which is requisitioned. Rule 2(11) of the Defence of India Rules, defines the word"requisition" as meaning in relation to any property

(i)to taken possession of the property,or
(ii) to require the property to be placed at the disposal of the requisitioning authority.

In the case under consideration, the delivery of Railway Receipts to Government may be construed as symbolic delivery of the consigments of Bajri and what in respect of which Govern, ment has already made payments. Since the property now proposed to be requisitioned has already been placed at the disposal of Government the question of requisitioning the property does not arise. There can be no requisitioning or acquiring at this stage.

Sd/-
28/5
Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) No.3878,dated the 29th May 1943.

M.R.D.
20/4/6

R.I. NO. 6088/27.5.

Submitted.

2. Pl.see A.D.C.S.'s office note at PP. 5-6 ante. It appears that a complaint has been lodged against Messrs. Mavji Valji &Co.. Bombay for ~~fa~~ failure to declare their stocks of (i) Tur Kurma (ii)Tur Chuni and(iii)Tur Chhalla incontravention of G.M.F.D.,(Supply)No.383II(b),dt.6.3.43 as modified by No.383-II dated 26.4.43. It also appears that the premises of the shop were raided on 12.5.43 i.e. on Wednesday as no declaration was received by the Director of Civil Supplies (Statistics Section) on Tuesday in respect of their stocks on Sunday immediately preceding that Tuesday. Later on,declaration from the firm dated 11 May 1943, was received by the Director on 13-5-43. Office of the A.D.C.S. is of the view that the declaration dated 11.5.43 was ante~~x~~ dated as it was received as late as on 13.5.43 and therefore the firm mist be considered to have contravened the notifications in question. The R.L.A. is requested to advise whether the view taken in the A.D.C.S.'s office note is correct.

3. By G.M.F.D.(Supply)No.383-II (b),dated 6.3.43 issued in exercise of the powers conferred by rule 116 of the D.of I Rules as modified by No. 383-II(b), dated26-~~3~~ 4-43,has ordered that every person in the City of Bombay and the B.S.D. shall on every Tuesday beginning with 9thMarch 1943 furnish to the Director of Civil Supplies (Statist

Director of Civil Supplies(Statistics Section), Bombay in The form in Schedule I thereto appended, a full and correct statement of the stocks of any of the articles specified in column 1 of Schedule II therefore appended, held by him in the City of Bombay and B.S.D. on his own account or on account of, or in partnership with, any other person, on the Suday immediately preceding such Tuesday, if such stocks amount to the quantities specified against them in column 2 of the Second Schedule. It will be seen that every person has to furnish, on every Tuesday, beginning with 9th March 1943 a full and correct statement of the stocks of articles held by him on the Sunday immediately proceding such Tuesday. Although the words in the notificationare "on every Tuesday" and not "by Tuesday" it appears, that the statement must reach the Director by Tuesday; otherwise it must be considered that the person concerned has contravaned the notification in question. The view taken in the office note of the A.D.C.S.(L) at PP.5-6 ante appears to be correct.

4. This is another reference mad by the A.D.C.S.(L) who is not entitled to make such references to the R.L.A. under para.104 of the Secretariat Instructions. His attention may be invited to that para.

Sd/-
29/5

P.A. I agree.

Under the notification in question a person is required to <u>furnish on every Tuesday</u> a correct statement of the stocks of articles held by him on Sunday preceeding such Tudesday if the stocks amount quantities specified against them in column 2 of Schedule II The word "furnish" means to supply, give afford. A The statement should be presented or delivered to the D.S.S. on Tuesday every week and if he mkes

and if he makes a default in complying with the provisions of the order he will be punishable und under rule 116(2) of the Defence of India Rules.

2. Attention of the A.D.C.S. may be invtied to rule 104 of the Secretariat Instructions, under which he is not competent to make reference to th R.L.A.

Sd/-
29-5

A.L.R. I agree the whole but it is not necess ary that the statement should be presented to the D.C.S. on Tuesday. From 'A' of P.A.'s note as amended.

I suggest the following:-

It means more than send. It is not enough e.g., to post the statement at any time during the course of Tuesday. The holder of stocks must see that t statement is delivered to the post office at such a time that in the ordinary course of post the statment would reach its destination on Tuesday. On the other hand the holder would not it seems be necessarily responsible for delays in transmissio His responsibility would depend on the circumst- ances of each case. The facts of the delivery of the statement in this case are not fully stated.

Id/-R.S.H.
31/5

R.L.A. I agree

Reply as suggested

Id/-P.N.M.
1/6

Office of the R.L.A.

The word "furnish" means to supply, give, afford. It means more than send. It is not enough e.g. to post the statement at any time during the course of Tuesday. The holder of stocks must see that the statement is delivered to the post office at such time that in the ordinary course of post the statment would reach its destination on Tuesda On the other hand the holder would not, it seems, be necessarily responsible for ~~many~~ delys in transmission. His responsibility would depnd on the circumstances of each case. The facts of the delivery of the statement in this case are not ful stated.

2. Attention of the Assistant Director of Civil Supplies is invited to rule 104 of the Secretariat Instructions, under which he is not competent to make references to the R.L.A.

Sd/-
2/6

Remembrancer of Legal Affairs.

U.R. to A.D.C.S. NO. 3985 Dated the 3rd June 194

M.R.D.
20/4/56

Office of the R.L.A.

On the occasion of his daughter's Wedding Khan Saheb Cowasji Pestonji Madon gave luncheon to 17 guests and dinner to 49at the Albless Baug on 21st February 1943. On the same occasion and at the same place his son-in-law,Mr.P.N. Bagli gave luncheon to 15 guests and dinner to 44. The luncheon guests are said to have been Members of the family who merely for the convenience of the marriage ceremony were given lugh at the Albless Baug instead of at their homes. For the two luncheon parties and the two dinner parties the same caterer was employed. But the caterer supplied the meals under two apparate contracts taken from the two hosts. The dinners were served on the same verandah, but a screen was put up between and there was a sign board for each party. On these facts, the question referred to the R.L.A. for consideration is whether there has been any contravention of R.D.(Supply) Order No. 390-II dated 30th January 1943 issued under the provisions of clauses(a) and(f)of sub-rule(2) of rule 81 of the Defence of India Rules.

2. The Order in question provides that no person or persons acting as host shall distribute or cause to be distributed on any one day at any party, entertainment or function religious, social or otherwise, in the City of Bombay or the Bombay Suburban District any eatables to 50 or more persons. The hosts in this case justify themselves by saying that they were entertaining separately and that their guests at luncheon were also their guests at dinner

It is however clear from the facts that both the hosts were entertaining on the occasion of one and the same function and on the same verandah, the caterer being common to both and presumably same the menu and tariff charges being also the same. The placing of the screen and sign board was doubtless a mere subterfuge to give it the semblance of separte parties. Although in the circumstances it would be reasonable to conclude that there was really one party at which more than 49guests were entertained, still the contention of Khan Saheb Madon and his son-in-low cannot be said to be entirely deviod of force and the Cour might quite conceivably hold that having regard to the strict wording of the Order separate parties by the bridegroom's people and the briges people were permissible.

3. Assuming that the luncheon and dinner given by Khan Saheb Madon and his son-in-low were two separte functions, the further question arises whether each of the hosts can be said to have violated the Order by entertaining more than 49quests at luncheon and dinner on the same day. If a host entertains 25guests at lunch and the same 25quests at dinner on the same day, he cannot be said to have committed a breach of the Order, for he had distributed food in two instalments to only 25 persons. In the present case, Inspector Naigamwala, alleges that the guests at luncheon were different from the guessts at the dinner. If that allegation can be substantiated there would be little difficulty in holding that the Order was contravened But if as KhanSaheb Madon and Mr. Bagli maintain the guests at luncheon were also the guests at dinner, then the number of persons to whom meals were served cannot be said to have exeeeded49.

4. On the whole, taking the facts as they stand I hardly think this is a fit case for prosectuion. It will be necessary

(3)

It will be necessary to amend the order if F.D.(Supply) desire to prohibit separate parties of the type under consideration.

As/-
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Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) No.2213 dated the 25th March 1943.

M.R.D.
20/4/56